

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1899

B
Page 5

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1899

UNITED STATES OF AMERICA,

Appellee,

—against—

EDWARD TAYLOR HINMAN,

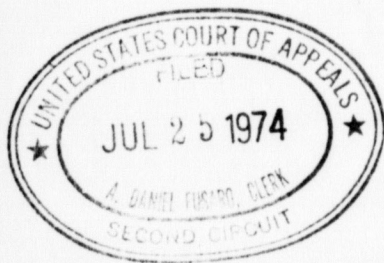
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RECORD ON APPEAL

LOUIS R. ROSENTHAL
Attorney for Appellant
16 Court Street
Brooklyn, New York 11241
(212) 855-2600

DAVID G. TRAGER
*United States Attorney for the
Eastern District of New York
Attorney for Appellee*
225 Cadmon Plaza
Brooklyn, New York 11201



PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

1

NAL DOCKET

2001319

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For Plaintiff: HINMAN:

Louis Rosenfield, Bklyn
16 Court St., 855-2600

(see entry
11-15-73)

- JOHN DOE, a/k/a "Teddy" EDWARD TAYLOR HINMAN

X FRANK J. SEAMAN and

X DANIEL JOHN HOMEN

For Defendant: DANIEL J. HOMEN

Alexander Rosenfeld
16 Court St., Bklyn, NY.
834-8080

Did conspire to possess & distribute heroin, etc.

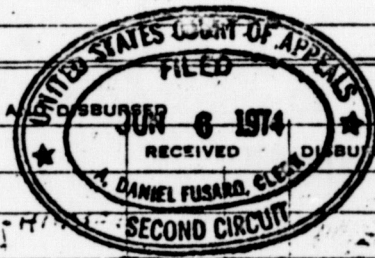
ABSTRACT OF COSTS

AMOUNT

DATE

CASH RECEIVED AND DISBURSED

NAME



Fine,

Clerk,

Marshal,

Attorney,

Commissioner's Court,

Witnesses,

74-1899

DATE

PROCEEDINGS

- 2-14-72 Before Judd, J. - Indictment filed
- 12/22/72 Before MISHLER, CH. J. - Case called- Deft DANIEL JOHN HOMEN and counsel present- Application by the deft for bail reduction is denied-pleading adjd to 12/26/72 at 10:00 A.M. .
- 12-26-72 Before MISHLER, CH J - Case called - Defts SEAMAN & HOMEN present - with counsel - On application by defts and waiver of the 5 day waiting period the defts are committed to exam.& report 28:2902(a).
- 2-26-72 By MISHLER, CH J - ORDERED that defts SEAMAN & HOMEN be committed to the custody of the Surgeon General for a period of 30 days to determine whether the defts are addicts likely to be rehabilitated through treatment pursuant to 28, U.S.C. Sec.2902(a) Certified copies to Marshal.
- 1-3-73 Magistrate's file 72 M 2201 inserted into CR file.

72CR1319

PROCEEDINGS

DATE	PROCEEDINGS
2/13/73	Letter dated 2/7/73 filed from deft FRANK J. HOMEN ^{SEAMAN} and DANIEL J. HOMEN re: expediti on of their transfer XXXX rapidly
3/6/73	Letter dated 3/6/73 filed from Ch. J. MISHLER, granting an extension of 30 days for examination. (for defts SEAMAN and HOMEN).
3/20/73	By MISHLER, CH. J.- Order filed (and to be signed by the defts), that defts be and it is hereby XX committed to the custody of the Surgeon General for treatment for an indeterminate term not exceeding 36 months from t herto as provided in Title 1 of the Narcotic Addict Rehabilitat ion Act of 1966. (this order has been sent to the defts in Kentucky for their signature- Order was signed by the Judge on 3/15/73.).
5-7-73	Voucher for compensation of counsel filed (Homen)
5/22/73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (SEAMAN)
5/22/73	By MISHLER, CH. J.- Writ issued , ret. 5/29/73 (SEAMAN)
5-23-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (HOMEN)
5-23-73	By MISHLER, CH J - Writ Issued, ret. May 29, 1973 (HOMEN)
5/23/73	Letters dated 5/17/73 filed from the MENTAL HEALTH CLINICAL RESEARRH CENTER, LEXINGTON, KENTUCKY re: defts (SEAMON and HOMEN) capability to adapt to their program
6-5-73	Writ retd and filed - Deft SEAMAN produced. Writ executed.
6-5-73	Writ retd and filed - Executed as to deft HOMEN.
6-14-73	Before Mishler, Ch J - Case called - deft Homen & counsel A. Rosenfeld present. deft HOMEN arraigned and after being advised of his rights b the court and on his own behalf enters a plea of guilty to count 1 - b conditions continued and sentence adjd without date.
6-14-73	Notice of Appearance filed for deft HOMEN.
6/20/73	Before MISHLER, CH. J.- Case called- Deft and counsel present Deft S arraigned and after being advised of his rights by the Court and on l behalf enters a plea of guilty to ct. 1 Sentence adjd without date.
8/17/73	Before MISHLER, CH.J.- Case called- Defts Homen and Seaman prsent w with counsels-Deft Homen sentenced to imprisonment for 3 years on c and special parole term of 10 years on ct 1 pursuant to YCA- One ap of AUSA Kaplan cts 2 and 3 are dismissed- Deft Seaman sentenced to for 3 years on ct 1, and special parole term of 10 years on ct 1 p to YCA, Deft to receive medical treatment as soon as possible, and Seaman and Homen to be separated during incarceration, On applicatic AUSA Kaplan cts 2 and 3 are dismissed Both sentences imposed under 5010(c) and 4209.

and Commitment filed- Certified copies to Marshal (as to Defts Seaman and Homen)

- 3/21/73 Certified copies of Judgment and Commitment ret'd and filed- Defts Seaman and Homen delivered to Federal Detention Headquarters
- 9-10-73 Stenographers transcript filed dated August 17 1973 (SEAMAN)
- 9/26/73 Writ ret'd and filed- Executed (SEAMAN)
- 10/2/73 Certified copy of Judgment and Commitment ret'd and filed- Deft delivered Federal Correctional Institution at Texarcana, Texas (HOMEN)
- 10/30/73 Bench warrant ordered and issued (JOHN DOE)
- 11-15-73 Order of removal, Executed warrant for arrest of deft, Docket Sheet (Magistrate), Change of address letter, and Appearance bond received from the Middle District of Florida, Tampa division and filed
Acknowledgment mailed for receipt of filed- Appearance bond placed in vault (EDWARD TAYLOR HINMAN (entered on this docket as John Doe a/k/a Teddy))
- 12-10-73 Before MISHLER, CH J - Case called - deft HINMAN present without counsel - pleading adj'd to Dec. 12, 1973 at 9:30 am. Deft is directed to produce an attorney at that time. March 4, 1974 for trial.
- 12-12-73 Notice of Appearance filed (HINMAN)
- 12-12-73 Before MISHLER, CH J - Case called - deft HINMAN & counsel Louis Rosenthal present - deft HINMAN arraigned and enters a plea of not guilty - On consent of the Govt bail cont'd at \$2,500 P/R Bond - March 4, 1974 for trial.
- 1-28-74 Petition for Writ of Habeas Corpus Ad Testificandum filed. (SEAMAN)
- 1-28-74 By MISHLER, CH J - Writ Issued, ret. 2-1-74 (SEAMAN)
- 2-1-74 Before MISHLER, CH J - case called - hearings to sentence imposed held and concluded (SEAMAN) Court vacated the Judgment and Commitment dated August 17, 1973 and imposition of sentence is suspended and deft is placed on probation for 5 years pursuant to Federal Probation Code, 5010(a) and 4209.
- 2-1-74 By MISHLER, CH J - Order filed that the Judgment of conviction dated Aug. 17, 1973 be vacated, null and void (SEAMAN)
- 2-1-74 By MISHLER, CH J - Order filed that the U.S. Marshal for the Eastern District of New York be directed to transport deft FRANK J. SEAMAN by commercial airline to the Veterans Hospital at San Antonio, Texas without delay.

Writ retd and filed- Executed- (SEAMAN)

Certified copy of Order vacating Judgment and Commitment retd and filed
 copy sent to M.C.F.P., Springfield Mo. (SEAMAN)

6-74 Certified copy of Order placing deft in custody for the purpose of tri
 him to V.A. Hospital at San Antonio retd and filed- Deft delivered to
 said hospital at San Antonio, Texas (SEAMAN)

28-74 Magistrate's file 73 M 1808 inserted into CR file.

4-74 Before MISHLER, CH J - case called - deft Hinman & counsel present -
 Caption amended to read EDWARD TAYLOR HINMAN instead of John Doe aka
 Teddy. Trial ordered and BEGUN. Jurors selected and sworn - trial
 contd to March 6, 1974 at 1:00 PM.

6-74 Before MISHLER, CH.J.- Case called- Deft and counsel present- Trial r
 Trial contd to 3-7-74 (HINMAN)

7-74 Before MISHLER, CH J - case called - deft Hinman & counsel L. Rosenth
 present - trial resumed - Court charges Jury - at 2:20 the Jury reti
 for deliberation - at 2:50 PM the jury returned and rendered a verdi
 of guilty as to deft Hinman. Jury polled - Jury discharged - trial
 concluded - all motions reserved until time of sentence - bail limit
 extended to and only the State of Florida - sentence adjd without da

3-7-74 By Mishler, Ch J - Order of sustenance filed (Lunch -14 persons)

3-15-74 Before MISHLER, CH J - case called - deft Homen & counsel Alexander
 Kornfeld present - Motion for reduction of sentence argued -
 Decision Reserved.

3/20/74 Writ retd and filed. Executed. HOMEN

28-74 Letter from deft HOMEN to chambers dated 2-14-74 filed re: sentence

28-74 By MISHLER, CH.J.- Memorandum of Decision and Order filed that deft
 letter of 2-14-74 be treated as a petition for a writ of habeas corp
 and is in all respects denied (copy sent to deft as ordered) (HOMEN)

15-74 Notice of motion for an order directing re-argument of deft's motion
 28-2255 filed ret. 4-19-74 (HOMEN)

19-74 Before MISHLER, CH J - case called - motion argued - Decision Reserv

17-74 Before MISHLER, CH.J.- Sentence adjd to 6-7-74 on consent (HINMAN)

20-74 Stenographers Transcript dated 4-19-74 filed

4-74 Voucher for Expert Services filed (HOMEN)

PROCEEDINGS

WISHLER, CH J - case called - deft & counsel Louis
Rosenthal present - deft sentenced to imprisonment for one
year and one day on count 1 plus special parole of 5 years.
Court advised deft of his right to appeal. Bail conditions
continued. (HINMAN)

6-7-74 Judgment and Commitment filed - certified copies to Marshal.

6-10-74 Notice of appeal filed (HINMAN)

6-10-74 Docket entries and duplicate of notice of appeal mailed to court of
appeals (HINMAN)

INDICTMENT

6

18)
018
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

72CR1319

----- X
UNITED STATES OF AMERICA

Cr. No. ---
(T. 21, U.S.C., §841(a) and
§846; T. 18, U.S.C., §2)

- against -

JOHN DOE a/k/a "Teddy",
FRANK J. SEAMAN and *Seaman*
DANIEL JOHN HOMEN,

DEC 14 1972

Defendants.

MISHLER, J

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 30th day of October 1972, and the 12th day of December 1972, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JOHN DOE a/k/a "Teddy", FRANK J. SEAMAN and DANIEL JOHN HOMEN and others did knowingly and intentionally conspire to commit an offense against the United States in violation of Title 21, United States Code, Section 841(a), by conspiring to possess and distribute a quantity of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §846)

COUNT TWO

On or about the 12th day of December 1972, within the Eastern District of New York, the defendants FRANK J. SEAMAN and DANIEL JOHN HOMEN did knowingly and intentionally distribute a

quantity of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a) and Title 18, United States Code, §2)

COUNT THREE

On or about the 12th day of December 1972, within the Eastern District of New York, the defendants FRANK J. SEAMAN and DANIEL JOHN HOMEN did knowingly and intentionally possess with intent to distribute a quantity of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) and Title 18, United States Code, Section 2)

A TRUE BILL.

Foreman.

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

8

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

VS.

EDWARD TAYLOR HINMAN.
formerly known as JOHN DOE,
aka "TEDDY"

INFORMATION

CRIMINAL NO. 72 CR 1319

FOLDER NO. 725618

MAILED November 28, 1973

PLEASE TAKE NOTICE that the above case will be called in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, in the Borough of Brooklyn on the 10th day of December, 19 73, at 9:45 A.M., 4th Floor, Courtroom # 5, at which time the defendant indictment herein will be required to plead to an ~~information~~ heretofore filed, for an alleged violation of the United States Criminal Code.

If defendant fail to attend, a warrant will be issued for
His arrest.

ROBERT A. MORSE
UNITED STATES ATTORNEY

By Charles E. Clayman
CHARLES E. CLAYMAN
Assistant U.S. Attorney

TO: ABOVE
Defendant
TO: Glen E. Greenfelder, Esq.
Attorney
TO: Bondsman

To Bondsman: You are notified to produce the above-named defendant, on the above date, otherwise the bond will be forfeited, not defaulted, on the above date.

CC:

cc: Assigned Judge Mishler
U. S. Marshall

U. S. Marshall
District Court E.D.N.Y. Calendar Commissioner

TRANSCRIPT OF TRIAL

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-against- :

72-CR-1319

EDWARD TAYLOR HINMAN, :

Defendant. :

-----x

United States Courthouse
Brooklyn, New York

March 6, 1974
1:00 o'clock p.m.

B e f o r e:

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD V, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ALVIN A. SCHALL, ESQ.,
Assistant United States Attorney

LOUIS ROSENTHAL, ESQ.,
Attorney for the Defendant

(A jury having been Sworn March 4, 1974, and instructed to appear at this time, the trial commenced as follows:)

(The following took place outside the presence of the jury.)

THE COURT: I won't be able to start this case for a few moments. They just gave me a very tall order next door. I want to bring the jury in and explain to them that I won't be ready to start for a while.

MR. SCHALL: At this time, your Honor, I was going to mark 3500 Material.

THE COURT: We will have to do that a little later.

Seat the jury.

(The jury is in the jury box.)

THE COURT: I called you in only to tell you --

THE CLERK: There is one more juror coming.

THE COURT: All right.

(The entire jury is now in the jury box.)

THE COURT: I called you in to tell you that I can't start this trial as scheduled because I am completing another matter in the other

courtroom. That's why you are in this jury room. I am off schedule. I was hoping for the best, but the best seldom occurs.

I am going to ask you to excuse me. I don't know how long it will take. It will probably be no more than ten minutes. But I don't know when I will be called back to the other courtroom again. You will have to excuse me for my improper scheduling, but I will get back as soon as I can.

(A recess was taken from this trial at this time.)

THE COURT: All right.

MR. SCHALL: Your Honor, before we seat the jury, I would like to take care of a few preliminary matters.

THE COURT: We will have to wait for the Courtroom Deputy for that.

MR. SCHALL: Before, I was going to be marking --

THE COURT: We are going to have to move fast today.

MR. SCHALL: Before we mark the 3500 Material, I want to bring to your attention two matters.

First of all, there will be testimony in this case by the Government's witnesses, at least one of them, relating to the case, an informant -- This informant is no longer within the control of the Government. He was attempted to be reached in January. Since then, the Government has sought to reach him.

I am prepared to make available to Mr. Rosenthal, counsel for the defendant, the informant's name and last-known address.

THE COURT: I thought you said he was going to give testimony?

MR. SCHALL: No.

THE COURT: He will not give testimony?

MR. SCHALL: No. No informant will be testifying.

THE COURT: All right, give us the name and address.

MR. SCHALL: This is his name and last-known address --

THE COURT: For the record.

MR. SCHALL: It is Mr. Saviero Mastronardi. And his last-known address was R.D. 2, Milton, New York. I would like to have it noted for the record I did speak to Mr. Rosenthal about this

previously, and there was no initial request for it.

THE COURT: When did you speak to him?

MR. SCHALL: Outside the courtroom, before we began the trial now.

THE COURT: When did any Government Agent last contact the informant at that address?

MR. SCHALL: I don't know when contact was made at the address. I do know the Agents have tried in person to physically contact him in January and were unable to do so. And since that time, tried to contact him through the New York State Police. The informant was most recently working with the New York State Police.

MR. ROSENTHAL: I would like to know if he is also known as Mel, and John Bioni?

MR. SCHALL: Let me just check on that, your Honor. Excuse me.

(Pause.)

MR. SCHALL: He is, to the knowledge of the Government, known as Mel. The other name, we are not aware of.

THE COURT: Anything else?

MR. ROSENTHAL: One other matter. Mr. Schall called to my attention on Monday that

part of the evidence in this case -- one of the bags of heroin that was seized at the airport was also used in a prosecution in Texas against a man who supplied the heroin to the man who brought the heroin into New York. That prosecution, according to Mr. Schall, was dropped after the case started in Texas.

The defendant was not the defendant Hinman. And I do believe this should be called to the attention of the jury because --

THE COURT: That the prosecution was dropped?

MR. ROSENTHAL: No, that it was not Hinman.

THE COURT: Why should that even come into the case?

MR. ROSENTHAL: For this reason, I believe the Government will try to show Hinman was the mastermind behind the scene. He was not arrested at the airport --

THE COURT: The only reason for testimony coming in that Texas had anything to do with this is that -- is the need for the Government to prove custody. All they need do is say it went down to Texas and was brought back by the FBI Agent, and was the same evidence that was seized.

If you ask questions about, Was it used

in a trial down in Texas, I am going to permit you to show that it was not this defendant. You can't introduce a subject and indicate to the jury that somebody was found Not Guilty, or the Indictment was dismissed in Texas.

MR. ROSENTHAL: I except.

THE COURT: On that theory, do you say you can show this was used in another trial?

MR. ROSENTHAL: The Government picked another man in Texas. It was a Mr. Seaman who brought the heroin into New York. The same man could have been -- I am telling the Government how to prosecute, but in this Indictment, they could have prosecuted as a possible co-conspirator the other man -- It was a man different from the man prosecuted in Texas for the heroin which the defendant is being prosecuted for.

THE COURT: You want to prove the Government started against someone and dropped it, and decided to prosecute this fellow?

MR. ROSENTHAL: I am saying they had another defendant in Texas. For reasons best known to the Government, they dropped that case.

THE COURT: I suppose if the cross-examination leads to it, you may ask the witness whether

something was said that indicated that somebody else did it. But that is a lot different than your line of inquiry, and I am ruling -- and this is a limited ruling now -- you cannot show that the Government started a prosecution and dropped it.

MR. ROSENTHAL: Thank you.

THE COURT: In the meantime, I have a jury that wants to listen to tapes. Suppose we do this, you go in there and ask Mr. Bergman how long it will take to find those tapes, and that may give me time to listen to at least one Opening in this case.

THE CLERK: Yes, your Honor.

MR. ROSENTHAL: I take exception.

THE COURT: To what?

I ruled only that you cannot ask a witness whether the Government prosecuted -- What was the name of the fellow?

MR. ROSENTHAL: I don't know.

THE COURT: Do you?

MR. SCHALL: James Duran.

THE COURT: Whether they didn't prosecute James Duran, and whether they didn't drop the prosecution. That doesn't mean you can't try to

show that Mr. Duran was the one who did it, and not this defendant. That is entirely different.

MR. SCHALL: Your Honor, if I might state in that connection, it is the position of the Government that the Texas prosecution is not relevant to the determination to be made in this case.

THE COURT: Mark this stuff.

THE CLERK: Yes, your Honor.

MR. SCHALL: I hand over, and I would also like to file with the Court, a stipulation which has been agreed upon between myself and Mr. Rosenthal, and also the Government's Request to Charge.

THE COURT: Mark it all.

THE CLERK: All right.

MR. SCHALL: The first one, a report of Agent Joseph Salvemini, dated 11/1/72.

THE CLERK: Consisting of two pages?

MR. SCHALL: Yes.

THE CLERK: So marked, Government's Exhibit 1 for identification.

MR. SCHALL: This is 3500.

THE CLERK: Right. Next?

MR. SCHALL: This is 3500-1.

Government's Exhibit 1 will be different.

THE COURT: Let the Clerk do his own marking.

MR. SCHALL: Second, Report of Mr. --

THE COURT: I'm sorry. I've got a jury waiting. We will have to stop this now.

(A recess from this case was taken at this time while the Judge attended to another matter.)

(continued on next page.)

(At 2:10 o'clock P.M., the trial proceeded.)

(The following occurred without the presence of the jury.)

THE COURT: We will seat the jury, and then I will allow you to read it into the record.

MR. SCHALL: Thank you.

(The jury then took its place in the jury box.)

THE COURT: Well, for today, you may find that the trial is disrupted for a lot of recesses, but we cannot help it. After today, it will run smoothly, I am sure.

I think we are going to have read a stipulation which the parties have entered into, a stipulation of facts.

MR. SCHALL: (Addressing the jury) United States of American against Edward Taylor Hinman, Frank J. Seaman and Daniel John Homen, defendants.

"It is hereby stipulated, consented to" --

THE COURT: The stipulation was only between the United States and the defendant Hinman; isn't that correct?

MR. ROSENTHAL: That is correct.

MR. SCHALL: That is correct.

THE COURT: Only between the United States

and Hinman.

Go ahead.

MR. SCHALL: (Addressing the jury.) "It is hereby stipulated, consented to, and agreed, by and between the undersigned that Government Narcotic Exhibits have been made known to counsel for the defendant Edward Taylor Hinman, and have remained in the exclusive custody and control of the Drug Enforcement Administration, formerly known as the Bureau of Narcotics and Dangerous Drugs, from the time of their receipt, as will be testified to, until their production in court;

"And it is hereby stipulated, consented to, and agreed, by and between the undersigned that the Government does not have to prove the chain of custody with respect to the above-described Exhibits."

The stipulation is dated, Brooklyn, New York, March 6, 1974.

"Edward J. Boyd, V, United States Attorney, Eastern District of New York, by Alvin A. Schall, Assistant United States Attorney," and it is also signed by Mr. Louis R. Rosenthal, attorney for the defendant Edward Taylor Hinman.

Thank you, your Honor.

MR. ROSENTHAL: So stipulated.

THE COURT: All right.

Mr. Schall, will you please Open to the jury?

MR. SCHALL: Thank you, your Honor.

OPENING STATEMENT BY MR. SCHALL:

MR. SCHALL: May it please the Court:

Madam Foreman; Ladies and Gentlemen of the Jury:

Learned counsel for the defendant;

And Honorable Judge Mishler:

My name is Alvin A. Schall, and I am an Assistant United States Attorney here in the Eastern District of New York. I will be trying this case for the Government.

At the outset, I would like to introduce to you the gentleman who will be seated with me during the trial, at counsel table, seated nearest to me, he is Mr. James Pascarella, and he is also an Assistant United States Attorney in this District.

Seated down at the table near the entrance to the courtroom is Special Agent Joseph Salvenini of the Drug Enforcement Administration.

I would simply like to Open by thanking you in advance, Ladies and Gentlemen, for the care and

Opening - Mr. Schall

attention which I know you will devote to your deliberations in this matter.

I think that it is helpful for the jury to think of the Opening Statement in a case like this as providing them with a broad and general outline so that when testimony is presented, and evidence is presented, it can be anticipated hopefully more easily and readily understood.

Before going on and providing you with this outline, I would simply like to note certain things:

The evidence in this case comes from the testimony which you will hear from witnesses from this witness stand, and it also comes from other material which is offered into evidence, and accepted by the Court as evidence.

Now, what I say to you now in these Opening remarks and in my Summation, and what counsel for the defendant says in his Opening remarks, and in turn in his Summation, these statements are not evidence, and they should not be considered as such in any way. In fact, I would say to you that if at the end of the case you don't find that what I have said is supported by the evidence, if you don't find what I have said in my Opening state-

Opening - Mr. Schall

ment and in my closing Summation, you don't find it is supported by the evidence, you should then in fact reject my remarks.

In addition, I would ask you to listen carefully to all of the testimony in this case, and to observe carefully all the Exhibits which are introduced into evidence in this case.

This is an important case: It is important for three parties, the Government of the United States, the defendant, Mr. Hinman, and also, for you as jurors, because as citizens of this country, you are participating in the criminal justice system, and it is important that you have that opportunity to participate in that system.

I have mentioned to you briefly the matter of evidence, and I am now going to tell you what I expect the Government will show by the evidence in this case.

Ladies and Gentlemen:

In this case, I expect that we, the Government, will show by the evidence that the defendant Edward Taylor Hinman knowingly and intentionally conspired with others to possess and distribute a quantity of heroin in violation of the laws of

Opening - Mr. Schall

the United States.

I ask you to keep this in mind, this is the central issue in the case, and the issue for you to consider in your deliberations:

Did in fact this man knowingly and intentionally conspire, as is charged in the Indictment?

The Government's case will be presented through four witnesses:

The first witness you will hear will be a forensic chemist of the Drug Enforcement Administration, a gentleman by the name of Edward Manning.

Mr. Manning will testify as to the chemical analyses which he performed on two separate quantities of white powder, and the Government expects that he will state in his testimony that he found the substances to contain heroin.

The second witness whom you will hear speak on the Government's case and testify for the Government, will be Special Agent Joseph Salvemini, whom I have already introduced to you as a Special Agent of the Drug Enforcement Administration, and he will testify in this case as to his activities in the

Opening - Mr. Schall

investigation involved in an undercover capacity.

Agent Salvemini will first testify as to a meeting which he had with the defendant, Mr. Hinman, on October 30, 1972, and he will testify as to conversations and discussions which took place during that meeting, in which we expect to prove that narcotic transactions were discussed.

He will also testify as to the receipt at that meeting from the defendant Mr. Hinman of a sample of white powder, and we further expect to prove, as I have indicated, Ladies and Gentlemen, that this white powder was analyzed for, and in fact contained, heroin.

Agent Salvemini will further testify as to conversations he had with the defendant, Mr. Hinman over the telephone, and we expect to show that these conversations involved discussions of heroin transactions.

You will also hear testimony from Agent Salvemini as to a meeting he had, and telephone conversations he had, with another conspirator in this case, an individual by the name of Mr. Frank J. Seaman. Agent Salvemini will testify as to discussions which took place with respect to heroin

Opening - Mr. Schall

transactions at that time.

Finally, also, Agent Salvemini will testify as to receipt of a quantity of heroin at the LaGuardia Airport on December 12th, 1972, in this District, a receipt of a quantity of heroin from two individuals, the individual by the name of Frank J. Seaman and an individual by the name of John Homan, and we expect to show by the testimony, Ladies and Gentlemen, that this receipt was a culmination of the conspiracy of which the defendant Mr. Hinman, we will show, was a part.

R2 fls

(continued on next page.)

Opening - Mr. Schall

And finally, you will hear testimony from two additional witnesses for the Government, first, Special Agent Richard Techler of the Drug Enforcement Administration, and secondly, Agent Frank DiCarlo, also a Special Agent of the Drug Enforcement Administration. These two gentlemen will testify as to their surveillance activities and the various observations which they made in the course of their investigation into this case.

Finally, at the conclusion of the Government's case, and after the defense has presented its case, it will be my duty to come again before you and give you my final Summation remarks. At that time, I expect to say to you, and expect to request you to find the defendant Guilty as charged in the Indictment, on the basis of the evidence which we will have presented in this case.

Further, before retiring and letting the facts and testimony speak for themselves, I would ask you to bear two things in mind:

One, as I have stated initially, consider all of the evidence carefully, and listen to all of the testimony carefully;

Secondly, I ask you to be fair, to be fair

Opening - Mr. Schall

above all to the defendant, Mr. Hinman, and be fair, above all, to the Government in this case.

I submit, Ladies and Gentlemen, that if you do these two things, you will have performed your duty as jurors.

I thank you.

THE COURT: Mr. Rosenthal.

OPENING REMARKS BY MR. ROSENTHAL:

MR. ROSENTHAL: Your Honor;

Mr. Schall, Mr. Pascarella;

Ladies and Gentlemen:

My name is Louis Rosenthal. I represent the defendant Edward Taylor Hinman, who is charged with a very serious crime. Because of this, I want you to remember your Oath and your promises when you were selected as jurors, that is, to listen very carefully to all the evidence that you are going to hear from the witness chair, to weigh it, and most of all, to give the defendant a fair trial.

The facts in this case will indeed speak for themselves. When you hear all the facts from that witness stand, you will find that the defendant, Edward Hinman, did never, never participate

Opening - Mr. Rosenthal

in any conspiracy to distribute drugs, and you will find that the defendant Edward Hinman innocent.

I thank you for your attention.

THE COURT: Call your first witness, Mr. Schall.

MR. SCHALL: Yes, your Honor.

I call Mr. Edward Manning.

THE COURT: Is he in the witness room?

MR. SCHALL: Yes, he was.

EDWARD MANNING, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHALL:

Q Mr. Manning, I would just ask at the outset that you please speak up so that all members of the jury, even those at the far end of the jury box, can hear what you say.

A Yes, sir.

Q Thank you.

What is your occupation?

A I am a forensic chemist.

Q By whom are you employed?

Manning - direct

A I am employed by the Drug Enforcement Administration.

Q Would you please describe for the members of the jury the nature of your work.

A Yes, I analyze substances that come into the laboratory to determine whether or not they contain a Controlled Substance, and if necessary, I testify as to those findings in court.

Q For how long have you been doing this type of work?

A Approximately two years, three months.

Q And what specialist training, if any, in connection with this work have you received from the Drug Enforcement Administration?

A Yes, sir.

Q When I first joined the Drug Enforcement Administration, then known as the Bureau of Narcotics and Dangerous Drugs, I received six months intensified training.

Q And what is your academic background?

A I have a Bachelor of Science in Chemistry from the College of Santa Fe, and I received that in 1971.

Q Mr. Manning, you testified a minute ago that you performed analyses on substances, on suspected

Manning - direct

drugs, approximately how many of these analyses have you performed?

A Approximately 1,000.

THE COURT: I find the witness qualified as an expert to express an opinion as a forensic chemist.

MR. SCHALL: Thank you, your Honor.

THE COURT: That is just a determination which I must make before the testimony is admissible, and before you can consider it, but the weight to be given to the testimony is a matter solely for you.

BY MR. SCHALL:

Q Mr. Manning, at this time, I show you what has been marked for identification as Government's Exhibit 8, and I ask you if you would identify it.

THE COURT: May I see the marking, please?

THE CLERK: Your Honor, it has been marked.

THE COURT: All right.

Q Can you identify that?

A Yes, sir, I can identify two of these sheets of paper.

Q Will you please tell us what they are?

A Yes, sir.

Manning - direct

This is a BNDD Form 7, which is a summary of my analysis, at least the bottom part of it is the summary of my analysis of the substance, which I did an analysis on.

Q I see.

Thank you.

MR. SCHALL: Your Honor, I now request that these two envelopes be marked for identification as Government's Exhibit 10.

THE CLERK: So marked, Government's Exhibit 10 for identification.

BY MR. SCHALL:

Q Mr. Manning, I now show you these two envelopes which have been marked for identification as Government's Exhibit 10, and ask you to please examine them.

(The witness then perused the envelopes.)

Q Can you please tell us what this Exhibit is?

A Yes, sir.

Government's Exhibit 10 is two lock-sealed Evidence Envelopes, one of which has been opened, and the second of which is still in a sealed condition.

Q Now, would you please tell us how you can identify this Exhibit?

A Yes, sir.

Manning - direct

Both of these lock-sealed Evidence Envelopes contain my signatures on the back.

Q Now, before going any further, would you please explain, Mr. Manning, for the benefit of the members of the jury, what exactly you mean when you say a lock-sealed envelope?

A A lock-sealed envelope is constructed in such a way that it cannot be opened once it has been sealed without somebody being able to detect that it was opened.

Q Are both of those envelopes in a lock-sealed condition?

A No, sir, one is.

Q Would you please at this time hold up and show the members of the jury the envelope which is still in a lock-sealed condition?

A Yes.

(Witness then indicated.)

Q I now ask you to please open the envelope and break the seal and remove any contents which you may find inside.

(The witness did as requested.)

(An item was then handed to Mr. Schall.)

MR. SCHALL: I would not ask that this

Manning - direct

small package removed from Government's Exhibit 10
be marked for identification as Government's Exhibit
10-A.

THE CLERK: So marked, as Government's Exhibit
10-A for identification.

BY MR. SCHALL:

Q Mr. Manning, I now show you what has been
marked for identification as Government's Exhibit 10-A, and
ask you if you would please examine it.

(The witness then examined and opened the
packet.)

Q Will you please tell us if you are able to
say what Government's Exhibit 10-A is?

A Yes, sir, Government's Exhibit 10-A is one
glassine envelope, and a smaller packet, which looks like
a cellophane containing a white powder.

Q And how are you able to identify this same?

A My initials appear on the glassine envelope.

Q Now, did you have occasion in the course of
your duties to perform a chemical analysis of the contents
of this smaller envelope?

A Yes, sir, I did.

Q Now, did you obtain results from this analysis?

A Yes, I did.

Manning - direct

Q Would you please tell us what, if any, those results were?

A Yes, sir.

The results of my analysis on the material inside this plastic bag were that it contained a Controlled Substance, namely, two Controlled Substances, heroin, cocaine and it also contained starch and sugar.

The heroin was calculated as the hydrochloride salt, and the strength of that was 14.9 percent.

The cocaine also calculated as a hydrochloride salt was 2.18 percent.

Q I see.

Now, would you please just tell the members of the jury what you did with Government's Exhibit 10-A after you were finished with your analysis?

A Yes, sir.

Upon completion of my analysis, I placed this packet into Government's Exhibit 10-A, the lock-sealed Evidence Envelope, and sealed it, and then brought it to the vault for safe-keeping.

Q I see.

I would now ask you, Mr. Manning, to place these on the side here.

Manning - direct.

MR. SCHALL: I now offer into evidence what has previously been marked for identification as Government's Exhibit 10, and also 10-A.

(continued on next page.)

SS fls

Manning - direct

MR. ROSENTHAL: No objection.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 10 and 10-A, previously marked for identification, are now marked in evidence.

MR. SCHALL: I would now ask that these four envelopes be marked for identification as Government's Exhibit 11.

THE CLERK: So marked, for identification.

(So marked.)

Q I now show you what has been marked for identification as Government's Exhibit 11, and ask you to please examine it. (Handing to witness.)

Q (continuing) What is Government's Exhibit 11?

A Government's Exhibit 11 is four lock-sealed Evidence Envelopes, three of which are in an opened condition, and one envelope is still in a sealed condition.

Q How do you recognize Government's Exhibit 11?

A My signature appears on the back of all these envelopes, sir.

Q Mr. Manning, I would ask that you please refer to one of these envelopes as being the lock-sealed condition. I ask that you now please break the seal on

Manning - direct

that envelope and open the envelope and remove the contents.

(Witness complies.)

MR. SCHALL: I would now request the contents taken from Government's Exhibit 11 for identification, now be marked as Government's Exhibit 11-A for identification.

THE CLERK: So marked for identification.

(So marked.)

Q I would now ask you to please examine what has been marked for identification as Government's Exhibit 11-A. (Handing to witness.)

A (Witness complies.)

Q What is Government's Exhibit 11-A?

A Government's Exhibit 11-A is two clear plastic bags, one of which contains a white powder.

Q How are you able to identify that?

A My initials appear on both plastic bags.

Q Now, did there come a time in the course of your work when you performed a chemical analysis of this substance you have identified as a white powder?

A Yes, sir.

Q Did you obtain from that analysis results?

A Yes, sir, I did.

Q What were the results of that analysis?

Manning - direct

A Yes, sir; Government's Exhibit 11-A was found to contain cocaine hydrochloride, sugar and starch, the percentage of cocaine hydrochloride was 20.67 percent.

Q Were you able to determine anything else from your examination of this substance?

A I also determined that there was starch and sugar present, also, sir.

Q Were you able to, in the course of your examination, determine anything further?

THE COURT: Could you give us weight?

THE WITNESS: Yes, sir, I gave the percentage. I did not give the weight. I'm sorry. The net weight of the powder in this package was 161.0 grams.

MR. SCHALL: I beg the indulgence of the Court for a moment, your Honor.

Q Mr. Manning, you've stated that the substance which has been identified, marked for identification as Government's Exhibit 11-A was cocaine. I would ask you if possible to refresh your recollection by examining your report.

A Did I say cocaine? If I did, I'm sorry. It's heroin hydrochloride.

Q I see. What did you do with this substance when you had finished your identification of it?

Manning - direct

A Yes, sir; when I completed my analysis of the Government's Exhibit 11-A, I sealed it, and placed it within a lock-sealed Evidence Envelope, and returned it to the vault for safe-keeping.

Q I have one further question for you, Mr. Manning. Would you please tell the members of the jury approximately how many grams there are to an ounce?

A Approximately 28, sir.

MR. SCHALL: Your Honor, I have no further questions of this witness.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Manning, how do you determine, or how do you test this white powder to determine what is in it?

A I do four qualitative tests and one quantitative test.

Q What does that mean?

A It means I do a series of color and crystal tests, followed by two chromatography tests, and infra-red analysis.

Q Do you use any controls?

A Yes, sir, all my tests are done under controls.

Q Explain the controls, please.

A With reference to which test?

Manning - cross

Q Well, what do you do first?

A I weigh the substance, sir.

Q After that?

A Then, working in an area, I proceed to do color tests, taking a small portion, a sample, and testing it with specific reagent to determine whether or not I would get a color.

Q That concerns the use of chemicals on the suspected drug; isn't that correct?

A Yes, sir.

Q Do you use, or often test these chemicals that you use?

A Yes, sir, on a periodic basis, they are all tested.

Q How often?

A Couldn't give you a definite time, sir. I would say approximately once a month I test them with Controlled Substances that we have.

Q You mean a standard --

A Standard.

Q Did you ever use a blank?

A On our spot plates, where the thing is done. I use one area that's blank. In other words, to see what the regular tests would give without Controlled Substances.

Manning - cross

Q Do you ever run your chemicals, reagents, through a blank, through white powder, or any powder that you know does not contain any drugs?

A Yes, sir, on substances that I've determined contain no Controlled Substance, I have gotten negative results.

Q How often could you do that?

A That would depend upon the samples.

Q Government's Exhibit 10-A in evidence, that's a small packet that you examined first?

A Yes, sir, it's on the prosecution's --
(indicating).

Q Is this the packet you examined (indicating)?

A Yes, sir.

Q This is how you received it except in a big envelope (indicating)? You received it in a big Evidence Envelope?

A Yes, I received it in a big Evidence Envelope.

Q Could you tell me how much this weighs in ounces?

A Could I see my report, please?

(Document handed to the witness by Mr. Schall.)

A Yes, sir, the net weight of that was .90 grams, converting that to ounces, that would be approximately .03

ounces.

Q .03 ounces?

A Yes, sir.

THE COURT: Is that about a third of an ounce?

THE WITNESS: No, sir, it's 3/100ths of an ounce.

THE COURT: 3/100ths.

Q 3/100ths of an ounce; in other words, divide?

THE COURT: Did you say 9 grams?

THE WITNESS: No, sir, .9.

THE COURT: Not a full gram?

THE WITNESS: That's correct, sir.

THE COURT: I see.

Q If we divide an ounce into 100 parts, this would consist, the total weight, would make three parts, 3/100ths of an ounce; is that correct?

A Yes, sir, if I had an ounce of that substance, and divided that, that would be approximately correct.

Q What was the heroin content of this?

A 14 percent of the .03 grams.

Q Could you tell us in ounces?

A Approximately a 10th, or a little more than a 10th of what I said, .003, or .004.

Q Would that be approximately one 3/1000ths of

Manning - cross

an ounce?

A No, 3/1000ths.

Q 3/1000ths?

A Correct.

Q That is the drug content of this Exhibit
10-A in evidence?

A No, sir, also another Controlled Substance.

Q What else?

A Cocaine.

Q How much cocaine?

A In ounces, sir?

Q Yes.

A .0003.

Q Do you know the value, the street value of
this (indicating)?

A No, I can read it off --

Q Do you have your report in front of you?
Would that refresh your recollection?

A Not as far as the street value. I can tell
you what the Agent determined it was worth.

A I'm not asking you to do that.

MR. ROSENTHAL: No further questions.

THE COURT: Anything further, Mr. Schall?

MR. SCHALL: No.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Your next witness?

MR. SCHALL: Special Agent Joseph Salvemini.

J O S E P H P . S A L V E M I N I , called as a witness
after having been first duly Sworn by the Clerk of
the Court, assumed the witness stand and testified
as follows:

DIRECT EXAMINATION

BY MR. SCHALL:

Q Agent Salvemini, as I mentioned to Mr. Manni
I request at the outset you speak up clearly, distinctly,
so that all of the members of the jury can hear your testi
mony.

A Yes, sir.

Q Sir, by whom are you employed?

A I'm employed by the United States Department
of Justice, Special Agent for the Drug Enforcement Admin-
istration.

Q What capacity are you so employed?

A I do mainly undercover work.

Q For how long a period of time have you been
employed as an Agent?

A Approximately six years.

Q Basically, for the benefit of the members

Salvemini - direct

of the jury, Agent Salvemini, what are your duties as a Special Agent in the Drug Enforcement Administration?

A The enforcement of the Narcotics Laws, Federal Narcotics Laws.

Q I direct your attention to the afternoon of October 30th, 1972. Were you at that time acting in the performance of your duties as a Special Agent?

A Yes, sir, I was.

Q Where were you at that time?

A At approximately 5:15 in the afternoon, I was at the Market Diner, in Manhattan, located at 43rd Street and 11th Avenue.

Q Who else was present at that time?

A Present at that time was a confidential Bureau informant and an individual that the informant introduced to me as Teddy.

Q Agent Salvemini, would you please, to the best of your recollection, tell the members of the jury what took place at that time?

A Yes, sir. We were seated at a table in the Market Diner. I was introduced to Teddy, and Teddy and I had a conversation relative to my purchasing large quantities of narcotic drugs from him.

At this time, Teddy told me he had some people

Salvemini - direct

that were friends of his, and they were from San Antonio, Texas, and from the San Antonio-Austin, Texas areas. He told me his friends were dealing in large quantities of narcotic drugs; specifically, he stated heroin, cocaine and marijuana.

He stated that these people were securing or stashing these narcotics, drugs, in certain farms that they had rented in the Austin, Austin-San Antonio area. He told me at that time that he could provide me with up to a kilogram quantity of heroin through these connections of his from San Antonio-Austin, Texas, but it was his desire, his suggestion, that we first conduct a few smaller transactions until we got to know each other better.

Q Agent Salvemini, what, if anything, did you respond to that?

A I told him it was my preference, also, that we conduct a couple of smaller transactions, but I wanted a sample of the quality of heroin and cocaine he could provide me with before I conducted any transactions whatsoever.

At that time, he indicated to me, he told me that he had a sample of heroin with him, and he would like to give it to me, and did I know a place where we could go that he could give me the sample.

Q What did you do then?

Salvemini - direct

A I said I did. I instructed him to follow me, and the informant remained at the table, and the defendant, the subject, Teddy, and I went downstairs in the Market Diner, kind of like a Men's Room, I guess, a Ladies' Room down there, too, and phone booths. We went downstairs together, went into the Men's Room, and we waited a couple of minutes; some people down inside there, waiting for them to leave the Men's Room, and after they left the Men's Room, he produced a small plastic package, which he said contained the sample that was somewhat representative of the quality of the narcotic drugs that his people from San Antonio had. He gave that to me.

Q At this time, Agent Salvemini, I show you what has been marked as Government's Exhibit 10-A (handing to witness), has been introduced into evidence, and ask you if you could examine this, please.

A Yes, sir, I recognize it.

Q Could you please tell us what that is?

A This is the plastic package, white powder, that I was given by Teddy that afternoon in the Market Diner, and this is a small plastic bag that I put the package into myself. I initialled both the package and the plastic bag with my initials, and the date 10/30/72 appear on the package

Q I see. Now, Agent Salvemini, you testified

Salvemini - direct

that you got up, went into the restroom area of the diner, and received this small package from the individual that was introduced to you as Teddy. Could you please tell us what happened after that?

Q Well, I left the Men's Room, like a few seconds later.

Teddy exited the Men's Room, also, and the two of us went back upstairs to the main area of the diner. We went and sat back down at the table.

At that time, a further discussion ensued, and Teddy asked me for some money for the heroin that he had given me, and I told him that it wasn't my policy to give anybody any money when we were talking about much larger quantities; that I considered him to be the seller, and me the purchaser of a large quantity of drugs, and this was merely a sample, and I wasn't going to pay him for it.

I put my hand in my pocket and started to take the heroin back out to give it back to him. I said, "You can take it back if that's what you are talking about." He said, "No, no, everything is okay. Don't worry about it. It's my misunderstanding. I guess I'm not used to how you want to do business. That's all."

Q Now, what, if anything, happened after this exchange?

Salvemini - direct

A I told Teddy that I was going to check the sample out, and if it met my satisfaction, that I would be back in touch with him. I told him that I would get his phone number from the informant, and I would be back in touch with him if I was interested in making any purchases, any large purchases from him.

Q What, if anything happened then?

A As I recall it, I left the Diner and I went back to the Bureau headquarters, which was at 90 Church Street in Manhattan. At that time, I weighed, sealed and identified the evidence, and brought the evidence to the United States Chemist for analysis.

Q Now, Agent Salvemini, you testified that you went to the Diner, and you were introduced to the individual by the name of Teddy who gave you this small package of white powder. I now ask you, Do you see today in the courtroom, do you see today the individual who was introduced to you as Teddy?

A Yes, sir, the man I knew as Teddy is the gentleman seated to my left at counsel table with the brown sport coat and the long, light blond hair. We know him today as Edward Taylor Hinman. (Indicating)

THE COURT: Let the record show the witness identified the defendant Edward Hinman.

Salvemini - direct

Q I would also ask you at this time, Agent Salvemini, approximately how many of this type of undercover investigations of this type have you conducted?

A I've participated in the hundreds of undercover investigations.

Q Have you had indications in the past to receive samples of the type which you have testified to receiving on October 30th?

A Yes, sir. Many, many times.

Q Mr. Manning, you've heard him testify as to the substance involved. Would you tell us from your experience as an undercover Agent for the Drug Enforcement Administration the approximate street value, the worth of this type of quantity of heroin?

A Wholesale, as a person who would purchase it as a sample? This is not normally done. It would be about \$10. Retail, if I was to sell that on the street, you can make 10, make five dime bags out of it, which would be \$50; in other words, I could sell that for \$50 if I cut it five times, separated it into five equal parts, sold it to five different people.

Q Now, you've testified that this meeting took place on October 30, 1972. How would you describe in terms of street worth the quality of this sample which you received

Salvemini - direct

was it average, below average, or above average for that time?

A For that time, that was a very good sample for that time. It was high quality.

Q Subsequent to the meeting which you've just described at the Market Diner, what further action did you have indication to take in the course of your investigation in this case?

A Sir, I had a telephone conversation with Teddy--

MR. ROSENTHAL: I'll object to a telephone conversation unless we know how he made that conversation, how he knows who was talking.

THE COURT: The jury will understand that if it fails to find that the party on the other side of the telephone conversation was the defendant, to totally disregard it, but you may make that determination from all the circumstances indicates, and I'll allow it, subject to connection. If it's not connected, then just disregard it.

Q Agent Salvemini, you have testified as to the meeting which took place in the Market Diner, and you've testified that you apparently made a phone call. Would you please tell us exactly what you did.

A Yes. sir.

Salvemini - direct

Q In connection with this phone call.

A Approximately, I believe, it was two weeks after that. I know it was on a Saturday. I had previously received a telephone number from my informant as a way of getting in touch with this Teddy that I had met who had given me this sample. Let me see if I can remember the phone number. I believe it was 569-9362. It was area code 703, which would put it in the Alexandria, Virginia, area.

THE COURT: I'm going to have to suspend at this point. It will be probably for ten minutes. You may step down.

(Recess.)

(continued on next page.)

SS:GA
T3R2

(The jury enters the courtroom.)

THE COURT: Please be seated, Mr. Salvemini.

(Witness resumes the stand.)

DIRECT EXAMINATION

BY MR. SCHALL: (continued)

THE COURT: We're ready to proceed. I think the last question brought forth a statement from the witness identifying the defendant as Teddy. Take it from there, Mr. Schall.

Q You were, shortly before the recess, testifying as to a telephone conversation, Agent Salvemini. Would you please continue.

A Yes, sir, It was approximately two weeks later. I know it was on a Saturday that I telephoned the defendant, Mr. Hinman, at a phone number in the Alexandria, Virginia, area. The number was area code 703. The number was 569-9862 I believe it was.

At that time, I spoke to Teddy. I said, "Is this Teddy?" He said, "Yes." I said, "This is Joey, Mel's friend from New York." He said, "Yes, I remember." I asked him how things were going. At that time he expected there was going to be a possibility that we would conduct the transaction in the immediate future in terms of the way he was speaking that weekend, and he pressed me for a phone number that he could call me back at.

Salvemini - direct

He said, in a matter of hours notice, he would come up to New York and would bring narcotics, a quantity of heroin, with him. At that time, it was an unspecified quantity.

It being the weekend, I was reluctant to give him a phone number. I had the choice of giving the home phone number --

MR. ROSENTHAL: Objection.

THE COURT: Strike out "had a choice of giving him my phone number, which I didn't want to do."

Tell us what you did do.

A (continuing) I requested from him, after some discussion, and obtained a number that I could call him at. He instructed me to call him late that night, which I did.

As I recall, again, the number was in the general Alexandria, Virginia, area, Washington, D.C. area. I called him late Saturday night, or early Sunday morning. I recall having set the alarm to wake up in the middle of the night to make the phone call, which I did.

At that time, Teddy, the defendant Hinman, told me that he still anticipated that he was going to be able to come up with the narcotics, and bring it up to New York at relatively short notice, and he again pressed for a phone number that he could contact me at.

Salvemini - direct

At that time, I gave him the name Joseph Scozzaro and an undercover Bureau number, telephone number, he could contact me at.

MP fls

(continued on next page.)

Salvemini - direct

IP:GA
4R1

Q And can you tell me what, if anything, took place next in the course of your investigation of this case?

A Yes, sir. I believe it was approximately a week, or maybe a week and a half of so after the second telephone conversation I had with the defendant that I received a message that the defendant had called me at the undercover number, and for me to call him.

Q What did you do?

A Yes, sir. I did call the defendant at the number I had been provided, and I spoke to him, and at that time he stated to me he was having some difficulty in getting the man from San Antonio to bring the heroin up to New York, and was still trying, and expected something to be forthcoming shortly.

He pressed me to come to Washington, D.C., to meet with his people from San Antonio, and would introduce me to the people, and expected they might alleviate some of the problems.

I told him I wasn't going to do that. He told me, if possible, he would go to San Antonio himself to try to work something out with them.

Q Agent Salvemini, did you in fact go to Virginia as you testified you were requested you were?

A No, I did not. Other arrangements were made.

Salvemini - direct

Q What did take place next in the course of your investigation in this case?

A December 7, 1972, again at the Market Diner, at approximately 11:30 in the morning, I met an individual by the name of Frank Seaman.

Q Will you please tell us to the best of your recollection, Agent Salvemini, what, if anything, took place in the course of this meeting?

A During the course of the meeting, I had conversations with Mr. Seaman, and Mr. Seaman and I alone entered an undercover Bureau vehicle, and we proceeded down to lower Manhattan. In the course of our drive downtown, I had a conversation with Mr. Seaman. Mr. Seaman told me that he --

MR. ROSENTHAL: Objection to what anybody told this Agent.

THE COURT: Normally, usually, conversations with someone other than the defendant is not admissible in the trial. Conversations with Mr. Seaman would normally not be admissible. What Mr. Seaman says cannot bind the defendant.

There is an exception in conspiracies. The Government charges a conspiracy here. A conspiracy has been described as a partnership in crime. Everyone who is a member of the conspiracy is an Agent

Salvemini - direct

for every other Agent of the conspiracy. So will first have to make a determination before may charge this against the defendant. The Government will have to prove beyond a reasonable doubt that a conspiracy existed on or about, and before the 30th day of October, 1972 and the 12th day of December, 1972. That is the term of the conspiracy. And that it existed for the purpose of dealing in narcotics, possessing and distributing narcotics.

Now, if the Government proves a conspiracy existed, and proves that beyond a reasonable doubt and proves that Frank C. Seaman was a member of the conspiracy, and if the Government also proves beyond a reasonable doubt that this defendant knowingly and willfully entered into the conspiracy, then what Mr. Seaman says during the term of the conspiracy and in furtherance of the objectives of the conspiracy which is to deal in drugs, in heroin, then it is chargeable against the defendant, and it is chargeable against him.

If all of that is not shown, that the conspiracy existed, that it existed during the time set forth in the Indictment, that it existed for the purpose set forth -- in other words, to possess and deal in drugs, that Mr. Seaman and Mr. Hinman were members

Salvemini - direct

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that conspiracy, and it is not proven beyond a reasonable doubt, then disregard it.

In the meantime, keep it figuratively in a cubicle of your mind.

MR. SCHALL: Thank you, I would request the Reporter read back the previous question and answer.

THE COURT: Did you have a conversation with Mr. Seaman at the time that you were arriving in the automobile with him?

THE WITNESS: Yes, sir.

Q Could you tell us what was discussed in that conversation?

A Well, before we got in the car, while standing outside of the Market Diner, Mr. Seaman told me he expected I was going to show him a quantity of money. He said, "Since you already seen I can handle my end of the bargain, already received a sample of what I can do," he indicated, When was I going to show him a quantity of money.

We got into the undercover vehicle and started driving downtown, and as we drove downtown, we continued our conversation. And at that time Mr. Seaman stated to me he had brought with him from San Antonio to the Washington, D.C. area a pound of heroin, which he had cut and made two pounds of heroin. He had diluted it, and there were two pounds of

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heroin. Of the two pounds, one pound had been sold, and one pound was presently in the possession of Teddy.

And at that time, they would go back to Washington and obtain the pound, and bring it back.

I stated I was unhappy with the sample, I was more interested in getting a quality package of narcotics than one right immediately.

At the time, I remember we were under the West Side Highway and at Vesey Street, when he told me the package I would be receiving would be twice as good as the one he had sent me through Teddy. "Twice as good as the one I sent you through Teddy," were his words.

We continued driving. I stopped in the vicinity of His Honor's Bar, near City Hall.

Q What took place when you arrived at His Honor's Bar?

A I parked the car, and the two of us went into the restaurant and ordered lunch.

At that time, I left the restaurant and went outside and had a car parked on Ann Street, a second car, and in the car was \$15,000 in Government funds, which I obtained from the car, and I brought into the restaurant. And at that time I showed it to Seaman. And he didn't count

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it, he examined it, and flipped through it, and returned the money to me.

I exited the restaurant with the money, and I turned the money over to another Agent waiting around the corner in the street.

I had a conversation with my Supervisor, and I told him I was going to go back into the restaurant and set up a quarter of a kilo of heroin transaction with Mr. Seaman.

I reentered the restaurant and had a further conversation with Mr. Seaman, and during the course of this conversation, he told me what Mr. Hinman had told me previous to that, that his operation was using a bunch of rented farms in the San Antonio area to secrete large quantities of cocaine, marijuana, and heroin, to bring up to specifically New York, Washington, Alexandria, Virginia, and also Chicago.

We had a further conversation, and we then left the restaurant. We began driving back uptown to the Market Diner. On the way uptown, Mr. Seaman and I agreed on a quarter-of-a-kilo transaction, for which the price would be 6 to \$6500, the exact price to be determined by the ultimate price they would have to pay for it.

I also asked Mr. Seaman at that time whether Teddy was bringing the package up. He said, "No, I will be

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taking care of this one."

We continued up to the Market Diner, and Mr. Seaman exited my vehicle. I had provided him previously, on the way up, with an undercover phone number. The phone number I provided Teddy with. And we parted company.

Q Subsequent to this meeting which you just described, what further action, if any, did you have occasion to take in the course of your investigation in this case?

A Yes, sir. On the transaction that had been set up for December 11th, and on the morning of December 11th I believe the morning, I received an undercover call at the number I provided the defendant with. And it indicated that he was having some difficulty due to weather conditions in the San Antonio area.

Q You stated that the number you provided the defendant with, who did you mean when you said --

A I should have said both defendants.

Q Thank you. Proceed.

A I received a call from Mr. Seaman at that number, and he indicated there was some difficulty due to weather conditions in his obtaining the package. A storm in San Antonio.

After a couple of other telephone conversations, I calling him, and him calling me, he stated he was

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in possession of the package fairly late in the evening, and was uncertain which flight he was taking up. Perhaps it would be best, I said, to wait until ~~the~~ the following day until he could --

Q What date was it agreed he would fly?

A The 12th of December, 1972.

On the 12th of December, 1972, again there were a couple of telephone conversations. Finally, the defendant informed me he would be flying to New York on Eastern flight 2100 from San Antonio.

Accordingly, I obtained \$7,000 in Government money, which was again the price was going to be between 6500 and \$7,000, depending on what their cost would be for the trip and everything else, the quality, everything.

I secured the \$7,000 in Government funds, and I placed it in a locker in the Eastern Air Terminal. The 2100 flight landed. Mr. Seaman got off the plane with another individual subsequently identified as Daniel Homen.

Mr. Homen went downstairs and obtained a suitcase, a blue suitcase, and gave it to Mr. Seaman, and Mr. Seaman and I went into the Men's Room at the TWA Terminal, and at that time Mr. Seaman gave me approximately a quarter of a kilo of white powder, subsequently analyzed to be heroin

Q Agent Salvemini, I now show you what has been marked for identification as Government's Exhibit 11-A, and ask if you can identify that? I think you better watch out for it.

A I identify it as being the package of heroin that I obtained on December 12th at Laguardia Airport, and I identify it by my initials, and the date, 12/12/72, which appears on the package.

I subsequently turned that package over to the Chemist's Office.

MR. SCHALL: Your Honor, I now offer into evidence what has been previously marked for identification as Government's Exhibit 11-A.

MR. ROSENTHAL: I object to this as having no connection with the Defendant in this case.

MR. SCHALL: Your Honor --

THE COURT: Don't say anything.

May I have this witness' testimony with reference to that?

(Whereupon, the last question and answer were read by the Reporter.)

THE COURT: Strike out the answer as not responsive.

Can you identify it?

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THE WITNESS: Yes.

Q How are you able to identify it?

A By my initials and the date that appears on the package.

THE COURT: When was that inscribed, your initials and the date?

THE WITNESS: When I received it.

THE COURT: That day?

THE WITNESS: Yes.

THE COURT: Did you do anything with it after you initialed it?

THE WITNESS: Yes, sir, I delivered -- Well, previous to delivering it to the Chemist, I secured it in a Bureau Overnight Evidence Vault, and obtained it the next morning and delivered it to the Chemist. But it was initialed prior to putting it in the vault.

MR. ROSENTHAL: I object to it. It has no connection to the defendant on trial.

THE COURT: Objection overruled, let it be marked.

Again, the question as to whether this testimony is admissible against this defendant is conditioned upon the Government being able to prove beyond a reasonable doubt that a conspiracy existed, that

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the object of the conspiracy was the possession and distribution of heroin.

Mr. Seaman arrived at John F. Kennedy Airport on December 12, and if he was a member of the conspiracy, if the Government proves beyond a reasonable doubt that this defendant knowingly and willfully entered into that conspiracy, if the Government proves all that beyond a reasonable doubt, then the transaction, if it is shown to be in furtherance of the conspiracy, is chargeable against this defendant. Otherwise, it isn't.

THE CLERK: Government's Exhibit 11-A, previously marked for identification, now marked in evidence.

THE COURT: We will stop at this point, and I am going to suspend for the day. I am sorry we had all these interruptions, but I am sure it will go smoothly tomorrow.

Don't talk about the case with anyone. And when you reassemble tomorrow, don't talk about it then. When you reassemble tomorrow, come into the jury room adjoining courtroom 5, my jury room. If there are any last minute instructions, you'll get them, but I expect that's where you will be spending

your time during this trial.

The jury is excused. Try to get here at 9:30 or twenty minutes to 10:00. Register downstairs first, and after you do that, immediately come up. I intend to continue this case promptly at 10:00 o'clock.

(The jury left the courtroom.)

MR. SCHALL: I would just bring one point to your Honor's attention. I believe you stated, when you were speaking to the jury, it was J.F.K. Airport. I believe he testified it was Laguardia.

THE COURT: I didn't hear what he testified to. My recollection was J.F.K.

All right, you can make that correction.

I will start promptly at 10:00 o'clock.

You can put them on the record now.

THE CLERK: In United States against Hinman, two-page report dated November 1, 1972, marked Government's Exhibit 1 for identification.

A two-page report dated November 6, 1972, marked Government's Exhibit 2 for identification.

A one-page report dated November 27, 1972, marked Government's Exhibit 3 for identification.

A four-page report dated December 7, 1972, marked Government's Exhibit 4 for identification.

Two-page report, dated December 7, 1972,

*** marked Government's Exhibit 5 for identification.

Four-page report, dated December 19, 1972,

** marked Government's Exhibit 6 for identification.

Four-page report, dated December 20, 1972,

*** marked Government's Exhibit 7 for identification.

Four pages of Form BND -7, marked Govern-

**** ment's Exhibit 8 for identification.

Grand Jury minutes of Agent Salvemini marked

**** Government's Exhibit 9 for identification.

Also, Government Requests to Charge, marked

*** Court Exhibit 1 for identification.

(All so marked for identification.)

(A recess was taken at this time until
March 7, 1974 at 10:00 o'clock A.M.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-against- :

EDWARD TAYLOR HINMAN, :

Defendant. :

72-CR-1319

-----x

United States Courthouse
Brooklyn, New York

March 7, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD V, ESQ.,
United States Attorney
for the Eastern District of New York

BY: ALVIN A. SCHALL, ESQ.,
Assistant United States Attorney

LOUIS ROSENTHAL, ESQ.,
Attorney for the Defendant

THE COURT: I hope we don't have to interrupt too often. I will be in that courtroom. If all the jurors are here, I will continue the case there. I am going to ask the Courtroom Deputy to check the jury room and see if the jurors have come in. Seat them, if they are. Make sure Mr. Schall is there.

THE CLERK: Defendant Hinman Request to Charge marked Court Exhibit 2 for Identification.

THE COURT: Seat the jury.

(The jury entered the jury box.)

THE COURT: Good morning, ladies and gentlemen. A long time a Scotch poet wrote, "The best laid plans of mice and men oft gang aglay."

As you can see, mine gang aglay. I hope we don't have the repeated number of disruptions we had yesterday. I will do the best I can.

Mr. Schall.

MR. SCHALL: Thank you, your Honor.

J O S E P H P . S A L V E M I N I , resumed and testified further as follows:

DIRECT EXAMINATION

BY MR. SCHALL (Continuing):

Q Agent Salvenini, I believe that when we broke yesterday you had testified that you received a quantity of a white substance from Mr. Frank Seaman and

Daniel Homan at LaGuardia Airport. Will you please tell us what if anything took place after that.

A Well, immediately after my receiving the white powder, I proceeded to where I had locked the money in the wall safe, not a safe, but a luggage compartment such as you find in an air terminal, and I took the money out and gave the pre-arranged signal and the defendants were arrested.

THE COURT: You mean Daniel Homan and Seaman were arrested?

THE WITNESS: Yes, sir.

MR. SCHALL: Your Honor, at this time I would like to have marked for Identification as Government's Exhibit 12, this blue travel suitcase.

THE CLERK: So marked Government's Exhibit 12 for Identification.

MR. SCHALL: I would ask to have marked for Identification as Government's Exhibit 13 this small brown address book.

THE CLERK: So marked Government's Exhibit 13 for Identification.

MR. SCHALL: I have two particular pages in this address book which are paper-clipped and I would like to have those marked for identification

respectively as pages 13-A and 13-B.

The first page is the page in the address book under the heading of the letter "J". I would ask that be marked for Identification as Government's Exhibit 13-A.

THE CLERK: So marked, Government's Exhibit 13-A for Identification.

MR. SCHALL: I would also ask that the page under the heading "T" be marked for Identification as Government's Exhibit 13-B.

THE CLERK: So marked Government's Exhibit 13-B for Identification.

MR. SCHALL: Thank you.

Q Agent Salvemini, I show you now what has been marked for Identification as Government's Exhibit 12 and ask you to please examine it.

A Yes, sir.

Q Can you identify it?

A Yes, sir, I can. It has my initials and the date on the top here. The suitcase which the quarter kilo of heroin was contained and seized from the defendant Seaman at the LaGuardia Airport.

Q What did you do with the suitcase after you seized it?

A I identified it with my initials and secured it in the Bureau Non-Narcotic Evidence vault.

THE COURT: You say a quarter of a kilo.
How many ounces if that?

THE WITNESS: I think approximately seven ounces, seven or eight ounces.

Q I would ask you now if you would please open the suitcase and reveal what the inside of it looks like.

A At the present time it is empty. At that time it contained a quantity of clothes in addition to the narcotics which were removed and handed to me.

Q Thank you.

I now show you what has been marked for Identification as Government's Exhibit 13 and ask you to examine it.

A Yes.

Q Do you recognize it?

A Yes, I do. I recognize it by my initials and the date, 12/12/72.

Q Where are your initials and date in there?

A They appear in several places prominently inside the cover.

Q What is that item you are holding?

A This is a phone book which I seized from

the defendant Frank Seaman at the time we were processing him at the Bureau office in Manhattan.

Q I see. Now, Agent Salvemini, I direct your attention to the page in the address book which has a paper clip on it and you will see this page on the back is marked Government's Exhibit 13-A.

I ask you, if you please, to examine this page and tell us if you can identify it.

A I can.

Q How can you identify it?

A Again, it is part of this book and further has my initials on the bottom and also on that page is the name --

MR. ROSENTHAL: Objection.

THE COURT: Objection sustained.

Q I see.

Would you please tell us how you can identify that page?

THE COURT: You initialed it?

THE WITNESS: Yes.

Q Would you please, Agent Salvemini, examine the page.

A Yes.

Q Tell us what if any relevance to this case

you recognize on the page?

MR. ROSENTHAL: Objection.

THE COURT: Objection sustained. The defendant is objecting because you are asking the witness to read from something not in evidence.

Are you offering it?

MR. SCHALL: Yes, I will be.

THE COURT: The suitcase, is that 12, and the book --

MR. SCHALL: Yes, your Honor.

THE COURT: Any objection?

MR. ROSENTHAL: I would like to see it.

THE COURT: Certainly, show it to Mr. Rosenthal.

(Pause.)

MR. ROSENTHAL: Your Honor, I have the same objection as to the relevancy to the defendant Hinman.

THE COURT: Objection overruled with the limiting instruction you must keep in mind the indictment charges a conspiracy. Now, this defendant wasn't present at any time that the incident concerning which the witness just testified, the delivery of the valise and the seizure of the book. And it

can't be charged against this defendant, if you recall the limiting charge I gave you yesterday, unless the Government proves beyond a reasonable doubt that the conspiracy alleged in the indictment in fact existed during the time and for the purpose charged. In effect, that Mr. Hinman and Mr. Seaman and Mr. Homan were in some kind of a narcotics deal. They must prove that the conspiracy existed at the time and for that purpose and that Mr. Seaman was a member of that conspiracy and then it must prove beyond a reasonable doubt that this defendant knowingly and wilfully entered into that conspiracy.

If the Government proves all that, then whatever Mr. Seaman did during the term of the conspiracy and in furtherance of the objectives of the conspiracy is chargeable against this defendant.

Now, the witness testified that there were narcotics in the valise. You determine whether it was in furtherance of the conspiracy.

The witness testified that he found this address book. Now, it may not be considered by you unless you make a determination that the address book was part of the narcotics business that they were

in as charged in the conspiracy.

If all that is not proved beyond a reasonable doubt, disregard.

MR. SCHALL: Thank you, your Honor.

THE CLERK: Government's Exhibit --

THE COURT: I'm sorry, did you say something?

MR. ROSENTHAL: No, Judge.

THE CLERK: Government's Exhibits 12, 13, 13-A and 13-B, previously marked for Identification are now marked in Evidence.

MR. SCHALL: Thank you.

THE COURT: Turn it over to the Clerk, so he may mark it.

Q Agent Salvemini, I now show you what has been offered into evidence as Government's Exhibit 13-A and ask you to please examine it and tell us if you recognize it.

A Yes, sir, I do.

Q How do you recognize it?

A I recognize it as being a page in the book that I had initialed at the time I seized it from Mr. Seaman. It further has my initials on the bottom of this page.

Q Directing your attention to that particular

page, what if anything is there on that page that you can recognize as being relevant to this case?

A My undercover name.

THE COURT: I sustain it as to form. It is for the jury to determine what is relevant.

Q What is contained --

A The name Joe Scozzaro, the undercover name I used during the course of this investigation, and the phone number 285-9632 which I recognize as my undercover number at the Bureau.

Q I see.

Directing your attention further, Agent Salvemini, to what has been offered in evidence as 13-B, I ask you to examine it and tell us if you recognize it.

A I recognize this page as being a page in this book which I initialed and seized from Mr. Seaman.

Q What is on that page?

A The name Ted Nineman, address 7208 Calamo Street, Springfield, Virginia, area code 703-569-9362. That is the same number I contacted Teddy at when I spoke to him about the narcotics deal we were going to conduct in New York.

THE COURT: Did you want the jury to see that?

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MR. SCHALL: Yes.

THE COURT: Give it to the Foreman and continue the examination. Don't talk to the jury.

MR. SCHALL: I am sorry.

THE COURT: If you want any instruction, ask me and I will be happy to give it to them.

MR. SCHALL: Yes, your Honor.

THE WITNESS: May I have some water, please?

THE COURT: Yes.

Q Agent Salvemini, what if anything did you do with Government's Exhibit 13, what has been marked as Government's Exhibit 13, and offered in Evidence, after it was seized?

A I placked it in a lock-seal evidence envelope and signed and sealed it and I secured it with the Bureau non-narcotics evidence custodian.

Q At this time I would like to clear up one point which you stated in your testimony yesterday.

You made reference to an individual in the course of your testimony by the name of Mel. I don't believe that you identified this individual. Would you please tell us who Mel is.

A The informant I referred to during the course of my testimony.

MR. SCHALL: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Rosenthal, cross-examination.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Agent Salvemini, this meeting on October 30, 1972, which took place in the diner, how many people were at that meeting?

A Physically present, myself, the informant Mel and the defendant Mr. Hinman.

Q Who arranged that meeting?

A I instructed the informant to bring the defendant to that location. You can say I arranged it.

Q Had the informant called the defendant to your attention?

A I don't understand.

Q You had never met the defendant before that day?

A No.

Q How long did you spend with him that day?

A I would say approximately 15 minutes.

Q Fifteen minutes?

A Yes, sir.

THE COURT: That day being October 10th?

THE WITNESS: October 30, your Honor, 1972.

Q And this was in a crowded diner?

A I don't believe the diner was so crowded.

Q There were a number of people in the diner?

A There were other people. I didn't count them.

Q The defendant you say arrived with the informant?

A No, sir, I didn't say that. When I got there the defendant and the informant were both seated at a table on the Eleventh Avenue side of the diner.

I didn't see them arrive.

(Continued on next page.)

Q They were already waiting for you?

A When I got there, Yes.

Q Will you describe how the defendant was dressed?

A Yes sir, as I can recall he had long blond hair, dark blond hair or light brown hair, a mustache, full straggly beard, I believe he was wearing a buckskin type jacket with the fringes hanging down. I believe you could say it is tan in color.

I don't recall what the kind of pants he was wearing was but I recall the buckskin jacket.

Q You spent 15 minutes with him?

A That's an estimate, it might have been 12 or 20 minutes.

Q Now, you say you went downstairs to the basement of the premises?

A Yes sir. There are restrooms there, men's and ladie's rooms and telephone booths.

Q For what purpose?

A For the defendant Mr. Hinman to give me a sample of heroin.

Q You went down there so other people wouldn't see you, is that correct?

A Yes sir.

Q You say he asked you for money for that

sample?

A Not at that time. When we returned to the table he asked me for money for the sample.

When he actually handed me the narcotics I placed it in my pocket and in a matter of seconds I walked out of the men's room and he followed me in a matter of seconds after that.

He never asked me in the men's room. After we walked upstairs and sat back down, that's when he asked me.

Q You were in the diner with other people present?

A We were seated at the table.

Q You say he asked you for money and you thought this to be a little strange?

A Under those circumstances, I had no authority to make an expenditure of monies so I gave them a story.

I told him I wasn't going to pay for the sample.

Q Then you reached into you pocket and removed the packet?

A I reached into my pocket. It was a relatively small package. I concealed it in my hand. I started to pull out -- I don't recall if I did -- but the clear indication

was I was going to return the sample to the defendant.

Q In view of everybody in broad view?

A Yes.

Q After you walked downstairs to avoid being seen?

A I don't know if you can determine it in broad view. We were seated at a table. There weren't 30 people standing over us observing us.

Q This fellow Mel, the informant, what is his name?

A Saviero Mastronardi.

Q This name was supplied to me yesterday by you and Mr. Schall, is that correct?

A Yes.

Q And his address was supplied, the last known address?

A Yes. I provided you with the address.

Q You don't know where this man is now?

A Right now I have no idea.

Q You made efforts to reach him?

A I'm sorry?

Q Did you make any efforts to reach him?

A During what period of time?

Q Recently? Did you make any efforts to reach

him for this trial?

A Yes.

Q You couldn't?

A I was unable to contact him.

Q This man is a registered informant for the United States Government?

A Yes sir.

Q When is the last time you saw him?

A I would say late last summer, late summer, 1973.

Q Tell me the job of an informant with reference to this particular --

A The job of an informant is to provide an introduction and vouch for a person who is going to purchase narcotics.

In other words, someone without an informant, without a vouch, they are not going to sell it. You might be a cop or another informant, God only knows.

If you have an informant, he can say, This man is okay, I have done business with him.

For that reason the defendant trusts you --

Q How long did you know this informant?

A You don't mean now, you mean then?

Q Yes.

A I would say six months approximately.

Q Was there any criminal case pending against him at the time?

A I don't know for certain, sir.

Q Did you meet him on the street and say, Would you like to be an informant? How did you meet him?

A I was introduced to him by Special Agents of the United States Secret Service.

Q This informant was well known to the drug world?

A No, absolutely incorrect.

Q He knew people who dealt in drugs?

A Obviously, he was a narcotics informant.

Q He had brought people to you to deal with you?

A He had made several introductions to me of narcotic violators.

Q Was he being paid for this?

A Yes.

Q How much was he being paid?

A I don't recall exactly.

Q Do you have any notes on this?

A No, I don't.

Q Was any promise made to this man, this Mel, that he would not be prosecuted for any past crimes on his

behalf?

A No.

Q You know that?

A Yes sir.

Q You don't know where he is now?

A No sir, I don't know.

Q Now, you say you asked Teddy for his phone number, or the defendant --

A No sir, I did not. I told the defendant I would get his phone number from the informant and contact him should the sample he gave me meet my specifications and I should be in turn interested in purchasing further narcotics from him.

Q You did in fact get the phone number?

A Yes, I called him.

Q How long after you left the diner did you call the defendant?

A I would say approximately two weeks. I specifically recall it was on a Saturday around the middle of the day, around 11:00 or 12:00 O'clock.

Q Did you reach him on the phone?

A Yes sir I did.

Q Did anybody else answer the phone before he came to the phone?

A The first occasion I think I called him --
I think I called him twice that morning. In other words,
I believe 11:00 O'clock or 11:30 and a female answered the
phone and said he wasn't in but would be.

I believe I called again thirty minutes later
and the second time he answered the phone himself.

Q Did you make a tape recording of that
conversation?

A No.

Q Did you make a log of this conversation?

A No.

Q Other than the Government exhibit, your
reports that are marked as exhibits, did you make any other
memorandum of these calls?

A Not other than my reports.

Q What was the gist of this conversation?

A After I introduced myself or reintroduced
myself to be certain he knew exactly who I was, he informed
me he had something pending with a good possibility with
people from Texas who were going to bring him a quantity
of narcotics that day and it was necessary for him to be in
close touch with me in approximately three or four hours.
He wanted to get in touch with me.

THE COURT: Did he say narcotics in that

conversation?

THE WITNESS: No, heroin.

THE COURT: He used the word heroin?

THE WITNESS: Yes sir.

Q When did you next speak with him?

A That night. I am not absolutely certain whether it was still that Saturday or early Sunday morning. It was late at night.

And I called him at a number he had provided me with when I spoke to him earlier that day.

Q What did he tell you then?

A Something was still pending and still looked good and still would be expecting to be able to do the deal very shortly and again pressed me for the phone number.

I provided him with the Bureau's undercover number.

Q Did anybody else have this Bureau's undercover number, Mel for instance?

A No, Mel didn't.

Q How did Mel contact you?

A Through our base station or through my group phone, depending on the time of day.

Q That night, is that the last time you spoke to the defendant?

A Which night?

Q The Saturday night or Sunday morning?

A No, it is not. I am sorry, it is not the last time I spoke to the defendant.

Q when did you speak to the defendant?

A The defendant called me I think approximately a week or a week and a half later and left a number for me, a message at the undercover number requesting I call him.

I did as a matter of fact. I called him from the United States Attorney's Offices in the Southern District of New York.

Q How did you get that message?

A Through I believe the base station or other special agents.

Q Was it a written message?

A No, they called me over in court.

Q Did you speak to him again?

A Yes sir.

Q What did he tell you then?

A This time he told me he expected to be able to convince the people from San Antonio to come with the heroin and bring it to New York.

Everything would go smoothly if I was willing to come to San Antonio or Virginia. He figured he could get

the people to come from San Antonio to Virginia and introduce me there.

The people were kind of reluctant to bring the package to New York and unwilling to front him anything more than a couple of ounces.

Q Didn't he ask you to go to Washington, D.C.?

A Alexandria or Washington, D.C., they are ten miles apart.

Q I know that. Did he tell you to go there and stand in the middle of the area?

A I told him I wasn't going to do it.

Q Where did he tell you to go?

A He said "Come down here."

Q He didn't tell you -- didn't you say on direct examination he asked you to go to Washington?

A That is Washington.

Q Washington or Alexandria?

A As I stated, Washington, D.C. and Alexandria are very close. Anyone in the East Coast --

Q I am asking you --

THE COURT: Objection sustained, it is argumentative.

You say he asked you to "Come down here?"
Was that his language?

THE WITNESS: Yes sir.

Q This telephone number that you had called the defendant at, did you ever ascertain who that number belonged to?

A I don't believe I did.

Q You made no attempt to find out who that number belonged to?

A I wouldn't want to say definitely I did because there were several numbers we looked for the defendant at several reports were written relative to tracing the background information on these phone numbers.

I don't specifically remember if there was background information on that particular number.

(continued on next page)

1 Salvemini - cross

CROSS-EXAMINATION

BY MR. ROSENTHAL (Cont'd):

Q Well, do you have these reports with you?

A No, sir, I don't have any reports with me.

Q Did you make those reports?

A No, sir. Certain reports were written by agents from other regions relative to particular phone numbers that we requested.

THE COURT: Did you make this investigation concerning the subscriber to the particular phone number, or was it other agents?

THE WITNESS: Other agents.

Q You've been an agent for six years?

A Approximately, yes.

Q You didn't have any interest in finding out who owned that telephone?

A Sir, again, I would not want to definitely say that I obtained the subscriber listing to that phone number. I do not specifically recall attempting to obtain a subscriber listing from that phone number.

Q Yesterday you sat there and you recalled the number off the top of your head.

THE COURT: Objection sustained.

MR. ROSENTHAL: Your Honor --

THE COURT: Disregard Mr. Rosenthal's statement.

MR. ROSENTHAL: The only thing I'm doing is testing his credibility.

THE COURT: Strike that statement out, too.

BY MR. ROSENTHAL:

Q So now we have a date approximately three weeks, your last phone call, when you called -- returned the call, three weeks after you met the defendant?

After that date, did you have anything to do -- did you speak to the defendant again?

A No, sir, I did not.

Q Did you meet the defendant any any place?

A No, sir, I did not.

Q You didn't hear from the defendant again?

A I'm sorry.

Q You never heard from the defendant; is that correct?

A No, sir, I did not.

Q Did it appear to you at that time as an experienced agent that perhaps the defendant was not going to deal with you?

3 Salvemini - cross

A No, sir, it did not.

Q Didn't you send somebody down to Virginia to find out what's happening?

A No, sir, I didn't --

Q Did somebody go down to Virginia?

A Yes, sir.

Q And reported back to you; is that correct?

A Certain results were obtained by that investigation, yes.

Q But you never went down to Virginia to find out what happened?

A No, sir.

Q In fact, the person that went down there was the informant, wasn't he, Mel?

A Yes, sir, that's correct.

Q And then there came a time in fact, December 7th, when he introduced you to Mr. Seaman?

A Yes, sir, that's correct.

Q By the way, did you ever speak to the informant Mel after your last contact with the defendant, and ask him, "Gee, what's going on in this case? Your man doesn't seem to be delivering"?

A I did speak to him. I didn't say, "Your

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Salvemini - cross

man doesn't seem to be delivering," because there has been satisfactory negotiations with the defendant.

Q But you were anxious to make a buy, weren't you?

A I wouldn't say I was anxious. I was certainly interested in the investigation. I didn't want it to die.

Q So then you met Mr. Seaman at the same diner?

A Yes, sir.

Q And you were introduced by the same informant?

A Yes, sir, that's correct.

Q You've spent six years as an agent; is that correct?

A Yes, sir, that's correct.

Q And you make written -- certain written reports as to your activities?

A Yes, sir.

Q Those reports have been turned over to me. And you -- what do you put in those reports?

A Certain items that would refresh my recollection. For example, so that I could review them and accurately testify as I'm testifying now.

Q You put important things about the case?

A As I stated, you know, importance is a relative

term. You might deem something important. I might not.

The reports are meant to refresh my recollection. Certainly not meant to be a verbatim transcript of everything that transpired. That would be impossible.

Q I believe on --

THE COURT: Excuse me.

(Pause.)

THE COURT: You may continue.

Q I believe on direct examination you stated that Seaman told you that Teddy had a pound of heroin in Washington waiting for you? Did you state that?

A No, I didn't. You're changing it around a little bit.

What I stated was that Seaman told me he had brought a pound of heroin from San Antonio, Texas, to the Washington, D. C. area and that he had made two pounds out of it.

In other words, he had added a pound of dilutant. That he had sold one poound and that one pound was still with Teddy down in Washington, D. C. And that I could have that pound if I wanted to on very short notice.

Q Agent Salvemini, I show you Government's Exhibit No. 4, which is your --

THE COURT: For identification.

Q For identification, which is your report dated December 7, 1972, and I ask you, anywhere in that report you speak of Teddy having a pound of heroin in Washington, D. C., or being told that Teddy had a pound of heroin in Washington, D.C.?

A Paragraph 7. Should I read it?

Q Yes, please.

A "Seaman told Agent Salvemini that he was regularly selling multi-pound quantities of heroin in Alexandria, Virginia, Washington, D.C., and Chicago, Illinois, and had on a few prior occasions dealt in New York City.

"Seaman further stated that he had transported a pound of heroin to Washington, D.C. area on his way to New York City to see Agent Salvemini. Further conversation" --
"From further conversation" --

THE COURT: Will you stop the agent when you are satisfied?

Did you stop him? Did you want him to stop?

MR. ROSENTHAL: Let me -- your honor, I just gave him my copy.

Q You can continue. Read the entire paragraph.

A "From further conversation, Agent Salvemini determined that the pound of heroin referred to by Seaman

had been cut once and was presently being distributed in the Washington, D. C. area.

Q Does that paragraph that you picked out to read mention anything about Teddy?

A No, sir, it does not.

Q This is the report that you prepared; is that correct?

A And the paragraph you picked out for me to read, yes, sir.

Q That you picked out to read?

A I'd like to continue.

THE COURT: All right. The Jury heard it and the Jury will decide who picked out the paragraph.

Next question, Mr. Rosenthal.

Q Can you tell me, if you know, what happened as a result of the arrest of Seaman and Holman to Seaman and Holman?

THE COURT: Objection sustained.

Q Do you know where Seaman and Holman are now?

THE COURT: Objection sustained.

It has nothing whatever to do with the case, Mr. Rosenthal.

MR. ROSENTHAL: May we have a side-bar?

THE COURT: The Jury may be excused.

(Jury excused.)

MR. ROSENTHAL: Your Honor, both the co-defendants -- former co-defendants, I believe, pleaded before your Honor and I believe were sentenced.

THE COURT: Yes.

MR. ROSENTHAL: I am not that much interested in that they pleaded guilty or were sentenced. I believe they both have been discharged from their sentence. I think Mr. Schall told me that.

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(Continued on next page.)

Hinman
m2 gr/nc

Salvemini -cross/Rosenthal

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THE COURT: That's not true

MR. SCHALL: No. I mentioned --

THE COURT: Mr. Holman was placed on probation after the sentence I imposed was put into question. And I decided that after he got his treatment, I'd probate him.

Mr. Seaman is under a sentence of three years and Special Parole of ten years and he's coming back to me because apparently he likes his sentence but he doesn't like the atmosphere he's in or some questions are raised and as a matter of fact he's on a writ to be brought back here.

MR. SCHALL: If I --

THE COURT: Incidentally, unrelated to this trial. I didn't understand his trial was coming up.

MR. SCHALL: I think it's reversed. It's Mr. Seaman who was in previously. Mr. Holman who is going to be coming in, I think, on the 15th.

THE COURT: Who had the skull injury?

MR. SCHALL: That was Seaman.

THE COURT: All right.

It was the war hero. The one who got the purple heart.

MR. ROSENTHAL: The only thing I wanted^g₆ to bring out, Mr. Seaman is definitely available to the Government. We have had out of court -- statements --

THE COURT: All right.

MR. ROSENTHAL: I don't want him.

THE COURT: You might get him whether you want him or not. Don't ask this witness. Ask for Mr. Seaman. Bring Mr. Seaman in. He's on his way here anyway, isn't he?

MR. SCHALL: Mr. Holman.

THE COURT: I mean Holman.

MR. SCHALL: Yes.

THE COURT: Seaman certainly isn't under the control of the Government.

MR. ROSENTHAL: Which one is the one in jail?

MR. SCHALL: Holman.

THE COURT: Holman. He's in Milan, I think.

MR. SCHALL: I'm not sure. I think he's in Springfield.

MR. ROSENTHAL: Then I withdraw that. Seaman is the key man, not Holman. I withdraw that. If Seaman is not in the control of the government, I thought he would be more than Holman.

THE COURT: You don't ask the witness that question. You want any witness, the Government will bring him in. I insist on complying with all defendant's requests.

MR. ROSENTHAL: Thank you.

THE COURT: Give it to him, if they want it.

MR. SCHALL: I will comply with requests.

THE COURT: The only time a defendant asks for a witness is when they know then the government can't produce him. Rarely anyway.

This time they can produce him. You ask for him, he'll be here.

Any other requests, Mr. Rosenthal?

MR. ROSENTHAL: No, your Honor.

THE COURT: I thought not.

Find out when Mr. Holman -- he's on his way here?

MR. SCHALL: He's due here, your Honor, I believe -- I'm handling the matter before your Honor on the 15th of this month. As far as Mr. Seaman is concerned, the last I heard was the order which you gave, he was to report to the Marshals in the custody of the Marshals to the

hospital in San Antonio.

THE COURT: I will not ask that he be produced unless Mr. Rosenthal asks for it but in the meantime I'd like you to check to see whether it is convenient for him to come in because they have busses coming in.

If a bus is available, he'll come on it. If they have a bus or plane that they are putting prisoners on today or tomorrow, bring him in. Because later in the trial Mr. --

MR. SCHALL: Which?

THE COURT: The one who we have in custody.

MR. SCHALL: Holman.

THE COURT: Holman.

MR. ROSENTHAL: Your Honor, I don't think I'll be five more minutes with him.

THE COURT: All right.

I hope to complete here. But I am going to take a pleading if I can and then I'll take this and then I'll go into the other courtroom.

MR. SCHALL: Might I --

THE COURT: Are you going to have redirect here?

MR. SCHALL: I'm just going to wait and see when Mr. Rosenthal -- I don't anticipate --

THE COURT: I want to complete the examination and then go in there and I intend to give this jury some lunch.

I don't usually do it this early, but I am hoping to eliminate whatever irritation they have by feeding them free.

U.S. v. Matteo.

MR. SCHALL: May I just have clarification on one point? You want me to find out if we can bring Holman in -- whether or not --

THE COURT: If he's coming in anyway. For example, suppose he's coming in tomorrow for the 15th. Let's know that or if they can put -- get him earlier, bring him in earlier. If he's coming in next week.

Ask if they can't bring him in sooner because he may be needed for this trial. It's going to serve a double purpose.

MR. SCHALL: I'll find out what the agents -- what the Marshals say.

THE COURT: All right.

(Recess taken.)

(The following occurred in the absence of the jury.)

THE COURT: Resume, please.

Seat the jury.

(Jury present.)

THE COURT: Hold the questioning,

Mr. Rosenthal. All right.

CROSS-EXAMINATION

BY MR. ROSENTHAL: (Cont.)

THE COURT: We are ready now.

Q After you started dealing with Mr. Seaman, did you ever have any contact with Mr. Hinman?

A I never spoke to him again, sir, from the last time that I spoke to him on the phone.

Q And all your dealings about price and delivery and quantity were with Mr. Seaman; is that correct?

A For the package I received at the airport, yes.

Q Yes. Time, place, delays? You spoke to Mr. Seaman about that?

A Yes, sir, that's correct.

Q In fact, he called you by phone, didn't he?

A Yes, sir, that's correct.

Q And when Mr. Seaman and Mr. Holman were

arrested at LaGuardia Airport, was Mr. Hinman there?

A No, sir, he was not. Not to my knowledge, anyway.

MR. ROSENTHAL: I have no further questions.

THE COURT: Any redirect, Mr. Schall?

MR. SCHALL: Your Honor, I have a few brief questions.

THE COURT: All right.

REDIRECT EXAMINATION

xxx

BY MR. SCHALL:

Q Agent Salvemini, you testified on cross-examination that all of your discussions with respect to price and quantity, etc., were with Mr. Seaman.

Would you please state what the substance of the discussions you had with respect to the heroin purchased was?

A Sir, the discussions relative to quality, for example, made specific reference to the sample that I received from the defendant, Mr. Hinman.

In other words, I was told by Mr. Seaman that the package I would receive in December would be twice as good, those were his exact words, as the package I had received from Mr. Hinman. So we were referring to the prior transaction.

MR. SCHALL: Your Honor, I have no further questions of this witness.

THE COURT: Any recross-examination?

MR. ROSENTHAL: No.

THE COURT: You may step down. Thank you.

(Witness excused.)

THE COURT: I am going to excuse the jury and this may be, oh, 20 minutes to half hour.

But, in the meantime, I want you to select lunch. I am going to order lunch for the jurors. At Government expense. And as soon as they are ready, I'll have the courtroom deputy come to the jury room and you do no more than return the menus and the slips so we can get the orders in.

I will try to get lunch to you as soon as possible. So I will give this to the foreman and it is Madam Foreman. I am not calling you by the incorrect title.

And the jury is excused. So would you please go through the door and make your selections as soon as possible so we will get the orders in.

(The following occurred in the absence of the jury.)

THE COURT: All right.

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MR. SCHALL: During the recess I checked¹⁰³ with the Marshals. Mr. Hollman is a person who is scheduled for the 15th before your Honor. He is scheduled to arrive on Sunday afternoon from Oklahoma. Other than that there is no regularly scheduled pick-up coming that way.

THE COURT: Once again for the record, could you want him here before?

MR. ROSENTHAL: No.

THE COURT: Let it go as it is.

MR. SCHALL: We'll be here Sunday.

THE COURT: Call the next witness, Frank De Carlo. Is here here?

MR. SCHALL: Yes. I would like to introduce Miss O'Brien to the Jury.

THE COURT: That isn't necessary.

(The Jury entered the Courtroom at 11:05 A.M.)

THE COURT: I thought I was going to be ten minutes or a half hour and it was only ten minutes. Call your next witness.

MR. SCHALL: Frank De Carlo.

2 FRANCIS DI CARLO, having been called

as a witness, was duly sworn by the Clerk of
the Court and testified as follows:

DIRECT EXAMINATION

XXXXXX BY MR. SCHALL:

Q I would ask you to please speak up clearly and
distinctly so that all the members of the Jury can
hear you.

By whom are you employed?

A By the United States Department of Justice,
Drug Enforcement Administration.

Q In what capacity are you so employed?

A I am a special agent.

Q For how long have you worked as a special
agent?

A Approximately three years.

Q Now, Agent De Carlo, directing your
attention to October the 30th, 1972 at approximately
5 o'clock P.M., were you at that time acting in the
performance of your duties as a special agent?

A Yes, I was.

Q What were you doing at that time if any-
thing?

A I was conducting surveillances in the
vicinity of 11th Avenue and 43rd Street in the borough

DeCarlo-Direct

of Manhattan, New York City.

Q Would you please tell us what, if anything, you saw?

A At that time I saw Agent Salvemini arrive at the Market Diner at approximately 5:15 P.M. I saw him enter the diner and go to a table at which were seated a confidential bureau informant and a subject, white male subject, later identified as Edward Taylor Hinman.

Agent Salvemini went over to the table and sat across from the informant and Hinman and spoke to them for approximately five minutes.

Shortly thereafter, Agent Salvemini and Hinman got up from the table, walked to the stairway leading to the basement of the diner, which is located a mens' room and a telephone. The two of them were down there approximately two or three minutes, after which time they came up and returned to the table.

Agent Salvemini conversed with Hinman and the confidential bureau informant for a short period of time, and then left the diner. After he left the diner he advised surveillance agents by radio that -- to discontinue surveillance, that they should discontinue surveillance.

Q Where were you located at the time you were making these observations?

A My vehicle was parked on West 43rd Street approximately 150 feet east of 11th Avenue.

Q And how were you able to see what you have described?

A All sides of the diner are made of glass and at several points during the surveillance I exited my vehicle, walked over to the side of the building where there is parking, head-on parking into two sides of the building and I stood there and looked in.

Q Do you see today in the Courtroom the man that Agent Savlemini went to the downstairs area with?

A Yes.

Q Would you please identify him, if you can?

A He's the gentleman over there with the blue suit, blonde hair, blonde mustache and blue shirt.

THE COURT: Let the record show the witness identified the defendant Edward Taylor Hinman.

MR. SCHALL: I have no further questions of this witness, your Honor.

MR. ROSENTHAL: No questions, your Honor.

THE COURT: You may step down, thank you.

Next witness.

MR. SCHALL: I call Agent Keckler.

XXXXXX RICHARD KECKLER, having been called
as a witness, was duly sworn by the Clerk of
the Court, took the stand and testified as
follows:

DIRECT EXAMINATION

BY MR. SCHALL:

Q Mr. Keckler, by whom are you employed?

A United States Department of Justice, Drug
Enforcement Administration.

Q What are your duties?

A Special Agent.

Q And for how long a period of time have you
been a special agent?

A Approximately three years.

Q I now direct your attention to the morning
of December 7th, 1972 and ask you if at that time you
were acting in the performance of your duties as a
special agent?

A I was.

Q Would you please tell us at what time this
was?

A Approximately 11:30 in the morning, A.M.

I was conducting a surveillance of undercover agent Salvemini who was working in an undercover capacity.

Q Where were you conducting this surveillance?

A At the Market Diner on 43rd Street and 11th Avenue in Manhattan, New York.

Q Would you please tell us what you saw as you conducted the surveillance?

A At approximately 11:30 A.M. Agent Salvemini entered the Market Diner. Approximately five minutes later Agent Salvemini exited the Market Diner with a man subsequently identified as Frank Seaman and the confidential informant. They had a short conversation outside the diner.

Agent Salvemini and Frank Seaman entered the undercover vehicle they were using and they drove down to Manhattan to His Honor's Restaurant on 23 Park Row in Manhattan and I followed them down.

Q What happened, if anything, when they arrived at the restaurant?

A They arrived at the restaurant approximately 11:50 A.M. and entered the restaurant, Agent Salvemini and Frank Seaman.

Approximately 12 P.M. Agent Salvemini walked out

of the restaurant himself, got the package of money and walked back into the restaurant. He was in the restaurant for approximately a couple of minutes, walked back out of the restaurant and handed the money over to another agent, and walked back into the restaurant.

Nothing further⁺ happened until approximately 12:30 that afternoon when Agent Salvemini and Frank Seaman left the restaurant.

They entered the undercover vehicle and drove back to the Market Diner where a short conversation was held between Agent Salvemini, the informant and the defendant Frank Seaman.

Q What happened after that?

A A short time after that Agent Salvemini left by himself and surveillance was discontinued.

MR. SCHALL: No further questions.

XXXXXXX

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Did you at any time during that surveillance see the defendant Hinman there?

A No, I didn't.

MR. ROSENTHAL: That's all.

THE COURT: Next witness.

MR. SCHALL: With this witness, your Honor, the Government rests its case.

THE COURT: The Jury may be excused for just a few moments.

(The Jury withdrew from the Courtroom at 11:10 A.M.)

(The following occurred out of the hearing of the Jury.)

THE COURT: Are you prepared to proceed?

MR. ROSENTHAL: Well, I have motions.

THE COURT: Yes.

MR. ROSENTHAL: The defendant would move to dismiss this indictment. I believe no prima facie case has been made out. I know there are co-conspirators out of Court, statements and actions, but before that happens there has to be some connection, or some evidence of the conspiracy.

In this case I don't believe there was any evidence of a conspiracy to enable the Government to bring in the co-conspirators' statements through Agent Salvemini. For that reason I move to dismiss this case.

THE COURT: Motion denied.

Are you ready to proceed?

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MR. ROSENTHAL: The defendant is going
to rest.

THE COURT: Are you ready to sum up?

MR. ROSENTHAL: If I can have two minutes,
your Honor.

(Continued on the next page.)

(Jury present.)

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THE COURT: All right, Mr. Rosenthal, are you ready to proceed with your witnesses?

MR. ROSENTHAL: Your Honor, the defendant rests.

THE COURT: I will ask you to retire once more. The evidentiary part of the case has been completed and we will have summations.

Mr. Rosenthal sums up first for the defendant and Mr. Schall will sum up for the Government.

The Jury is excused.

(Jury excused.)

THE COURT: I have gone over up to four of your requests to charge, Mr. Rosenthal.

You say that both of these defendants -- Mr. Seaman is not a defendant, but I know what you mean. Otherwise I find all the requests up to and including "4" proper.

"5," you want me to charge the Jury that they may draw no adverse inference by reason of the defendant's failure to testify.

MR. ROSENTHAL: Yes, your honor.

THE COURT: Well, the only one I find fault with up to 13, is 13, and I decline to charge 13 only because the Court of Appeals has said that that is an unfavorable charge.

The Jury may interpret it to mean that they¹¹² may find the defendant guilty by a fair preponderance of the credible testimony.

Do you agree with that, Mr. Rosenthal?

MR. ROSENTHAL: If the Court of Appeals has said it, I will agree with it.

THE COURT: Except for what I refer to, I find all the requests proper. I deny one.

The Government keeps putting in a request for that one. It is not necessary for the Government to prove the defendant's guilt beyond all possible doubt for if that were the rule, very few people would be convicted. That is objectionable.

I will give the usual charge on reasonable doubt. Except for one, I find all the other requests proper.

Are you read for summations?

MR. ROSENTHAL: Yes.

THE COURT: Seat the Jury.

(Jury present.)

THE COURT: All right, Mr. Rosenthal.

(Continued on next page.)

MR. ROSENTHAL: If your Honor please, Mr. Schall, Miss O'Brien, ladies and gentlemen of the Jury:

This is my last opportunity to speak to you, to address you on behalf of my client, Edward Hinman, and, of course, I won't be able to answer the arguments of the prosecutor because he sums up after I sum up.

But I want you to remember your promise to the Court, to the defendant, and to the Government, to remain fair and impartial and to weigh the evidence fairly and impartially and not to let any prejudice affect the defendant or the Government merely because this is a drug case.

This could be any type of case. It happens to be a drug case, and as in this case or any case, the defendant is presumed to be innocent until proven guilty.

The Government has the burden of proving this defendant guilty beyond a reasonable doubt. I say that is important, a reasonable doubt.

Now, I will come back to that later.

I am also going to ask you, close your eyes and say: Put yourself in his chair, put yourself in the defendant's chair and say: I sat through this trial. I listened to the evidence. I was the

defendant. Would I want to be convicted of a crime on this evidence, the evidence that you have heard on the witness stand? Has the Government proven the defendant guilty beyond a reasonable doubt? Have they met their burden?

The only way you can find this out is by listening to the witnesses, appraising their credibility and then determining whether what they said is sufficient to remove that reasonable doubt.

I contend that in this case it is not sufficient that there is a reasonable doubt. The Government here must prove the defendant guilty of a conspiracy to distribute or possess heroin which culminated in that delivery that you heard about at LaGuardia Airport.

There has to be a conspiracy. They have to show you a conspiracy, not merely the fact that they contend that the defendant delivered a sample on October 30, 1972, to the agent, not merely that. That is not the crime charged.

The crime charged is a conspiracy, a plan, a scheme, to do something else.

Agent Salvemini testified that he met with the defendant approximately 15 minutes on October 30,

1972, and that he was introduced to him by the informant, by Mel.

Of course, it was Mel's job to introduce the agent to people who might want to do drug business. Agent Salvemini said he received a sample from the defendant and the chemist told you that this sample contained one-three thousandths of an ounce of heroin.

The agent also told you that the defendant asked for some money for the sample, which is pretty unusual.

After they had gone down to the basement to the men's room to conceal this transfer of this small package, they wanted to be sure no one would see this transaction, the agent came back upstairs supposedly with the defendant, and when there was a hassle as to whether he was to pay for the sample or not, reached into his pocket while arguing with him and was going to hand this back to him, this sample that they were so careful, sneaked down into the bathroom to transfer it.

Of course, the defendant is supposed to have told in this 15-minute conversation, supposed to have told the agent that: I can get the stuff for

for you, I can get it.

There was no specifics laid out as to how much was going to be delivered, what the price was, where or when. And the agent said: I will call you, I will get your number from Mel.

According to the agent, he did call him two weeks later, called him at a number in the Virginia area. This same agent that sat up and spit out a number off the top of his head and another telephone number from the top of his head, could not remember or is not sure whether he ever checked out the owner of that telephone number which he called in Virginia, which might establish the owner of the phone or in fact belonged to Mr. Hinman. It was never done. That was a telephone call two weeks after the initial meeting. It was a call that night, the agent again calling the defendant.

Then another week goes by and the agent gets a message to call the defendant. They have another conversation, but nothing -- even according to the agent -- nothing is being delivered, there are no plans, nothing specific, no time, date. All it is: I will see you. I will get around to it. I will let you know. Don't worry, sit tight.

Perhaps the agent was getting the idea that the defendant was not going to deal with him. Maybe he was and maybe he wasn't. So Mel, the informant, the man that makes cases for the U. S. Government, nothing wrong with that. I don't think there is anything wrong in that. But his job, that is his duty and purpose, slithers around the periphery of the drug world, brings people in. That is his job.

How much he was paid in this particular incident, we don't know. But he is not a law enforcement official but an informant. He goes down to Virginia to find out what is going on and what is happening.

After he goes down there, a man by the name of Seaman comes up and is introduced, taken by Mel to the very same diner on December 7th, which is now approximately five weeks after the initial alleged meeting with the defendant, and Seaman allegedly tells the agent: I am with Teddy and I can get the stuff.

I can't cross-examine Mr. Seaman. He's not here. I can't ask him any questions. But even if he told that to the agent: I am with Teddy, how do

we know that that is true? How do we know even if he said: I am with Teddy, I can get the stuff, I work with him. We don't have Mr. Seaman here. We can't look at him to find out if he's a truthful witness.

Even if we accept the agent's word --

THE COURT: I shall charge that Mr. Seaman is available to both sides and you can draw no adverse inference on either side for the failure to produce Mr. Seaman.

MR. ROSENTHAL: May I point out that the defendant does not have to prove the Government's case and doesn't have to call any witnesses. The Government has to prove its case beyond a reasonable doubt and the Government has to produce sufficient witnesses to do so.

The defendant is charged only with conspiracy. What evidence is there that he was part of this plan?

Even if you listen to the agent, the agent seemed to be having difficulty getting the defendant to deliver any goods, to cooperate.

And now we have the phone calls that the agent has with the defendant. There is no tapes of those

phone calls. We don't know the exact contents of those phone calls. All we know is that Mr. Seaman came up and introduced by the Government informant, a man who makes cases, introduced to the agent and said: I am going to deliver the case to you. And he makes the price and deal and time, and Teddy or the defendant is never seen, never heard from from that last telephone call which I believe was on November 21st. Never heard from him again. Never seen. Never seen with Seaman. Never spoken to Seaman, never told the agent that spoke to Seaman: He's with me.

Of course, the defendant was not at the airport at the time the drug was delivered.

I beg you, I am not begging you for n acquital. I beg you to sit there and think and put out of your mind that this is a drug case, that this is just a drug case. This is a criminal charge and the same rules apply to all defendants in criminal charges, no matter what type of a case it is. And say to yourselves: If I was sitting in that chair, would I want to be convicted on that testimony; would I want to be convicted on that testimony?

Now, I assume you are going to be starting

with your deliberations and you will hear this again and again, reasonable doubt, the burden of proof, presumption of innocence. And you, ladies and gentlemen, you have the hardest job of all, harder than the Judge and harder than me. You make the decision affecting my client's life.

When this case is over, I will go to other cases, the Judge will have other cases, the U. S. attorney will have other cases, and when time passes, we all forget about this particular case. But the defendant Edward Minneman will never forget what you ladies and gentlemen do in this case.

Put yourself in his seat. Do you -- would you like to be convicted on the evidence that you heard from this witness stand?

The defendant is entitled to the same consideration that you would give yourselves, so put yourself there and I believe, after deliberating and talking among yourselves, that you will find the defendant innocent.

I just want to close by telling you, as we know now, as we have heard, no one is above the law, not anyone, but then again, no one is below it.

Thank you.

THE COURT: Mr. Schall.

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MR. SCHALL: Yes, your Honor.

May I please the Court, Madam Foreman, ladies gentlemen of the jury, Mr. Rosenthal, and Honorable Judge Mishler. It is now time for the Government to make its final statement in this case. And as the Assistant United States Attorney who has tried this case it is both my privilege and my duty to address you at this time.

I would start off first of all by saying in this case as in all criminal cases it is the objective of the Government to see that justice is done. In this case, again as in all criminal cases, the way justice is done is by determination of what was the truth.

In this particular case, ladies and gentlemen, again as in all criminal cases, it is for you, the members of the jury, to judge the facts as you have seen them and to determine what is in fact the truth.

Accordingly, I would ask you at this time to review in your mind the testimony as it was presented and again ask yourself what is in fact the truth.

The defendant in this case, Edward Taylor Hinnan is charged with knowingly and intentionally conspiring to deliver a quantity of heroin in

violation of the laws of the United States of America. And in order to find him guilty you must determine beyond a reasonable doubt that this man, the defendant, did in fact knowingly and intentionally conspire to possess and distribute a quantity of heroin.

I submit to you, ladies and gentlemen, that the evidence and the testimony which has been presented in this case supports such a finding.

And I would ask you now to join with me in a review of pertinent portions of this testimony, keeping in mind that there is other testimony and also bearing in mind as I stated in my opening remarks, that what I say is not evidence. The evidence is what comes from the witness stand and other exhibits and materials which are introduced into Court.

I will ask you to let the evidence speak for itself.

At this time, and this is precisely what I will do, I will ask you now to join with me, the two of together and let's hear the evidence in this case and let the facts speak for themselves.

I think it is clear that the substance of the Government's case here was presented through Special Agent Joseph Salvemini of the Drug Enforcement Administration. Agent Salvemini's testimony opened with the meeting which he had on October 30th, 1972 at the Market Diner in Manhattan with the defendant Mr. Hinman.

I am now going to refer to that testimony. You will recall that Agent Salvemini testified that after introductions had been made a conversation took place. And I will quote from the transcript: "At this time Teddy told me he had some people that were friends of his and they were from San Antonio, Texas, and from the San Antonio-Austin, Texas area. He told me his friends were dealing in large quantities of narcotic drugs specifically he said the heroin, cocaine and marijuana. He stated that these people were securing or stashing these narcotic drugs in certain farms that they had rented in the Austin-San Antonio area.

He told me at that time that he could provide me with up to a kilogram quantity of heroin through these connections of his from San Antonio-Austin, Texas, but it was his desire, his suggestion, that

we first conduct a few smaller transactions until we got to know each other better."

Subsequent to this conversation, Agent Salvemini testified he retired with the defendant Mr. Hinman to the restroom area of the diner and he stated that there at that time he receives from the defendant Mr. Hinman a quantity of white powder.

As you will recall, ladies and gentlemen, that a chemist, Edward Manning, of the Drug Enforcement Administration testified that his analysis of the white powder found it to in fact contain heroin.

Subsequent to the meeting which took place at the Market Diner, Agent Salvemini testified that he had a number -- or two telephone conversations, three telephone conversations with the defendant Mr. Hinman.

He stated in his testimony that he called the defendant at a number in the Alexandria, Virginia area, and I quote again from the transcript words which were spoken here in open court. I now am referring to the first telephone conversation which the defendant had with Agent Salvemini.

At that time, Agent Salvemini testified:

"I spoke to Teddy. I said is this Teddy? And he said Yes. I said this is Joe, Mel's friend from New York. He said yes, I remember. I asked him how things were going. At that time he expected there was going to be a possibility that we would conduct the transaction in the immediate future, in terms of the way he was speaking that weekend, and he pressed me for a phone number that he could call me back at."

Going on, Agent Salvemini testified further, he said: "In a matter of hours he would come up to New York and would bring narcotics, a quantity of heroin with him." At that time the testimony ceased there.

Subsequently, Agent Salvemini testified to a telephone conversation which he had late that night or the same day or early the following morning. Again I read directly from the transcript the testimony of Agent Salvemini with respect to this particular conversation.

"At that time Teddy, the defendant Hinman, told me that he still anticipated he was going to be able to come up with the narcotics and bring it

up to New York at relatively short notice. And he again pressed for a phone number that he could contact me at.

"At that time, I gave him the name Joseph Scozzaro, an undercover Bureau number, a telephone number he could contact me at."

Agent Salvemini's testimony, ladies and gentlemen, moves on.

The next contact that Agent Salvemini states he had with the defendant Mr. Hinman was in a phone conversation and as it turned out from the testimony this was the final time that Agent Salvemini had any contact with the defendant.

Turning to that particular phone conversation, the following testimony is given in response to my question as to what the agent, Mr. Salvemini, did after he received a message that he had received to call, he said: "Yes sir. I did call the defendant at the number I had been provided and I spoke to him, and at that time he stated to me he was having some difficulty in getting the man from San Antonio to bring the heroin up to New York, and was still trying, and expected something to be

forthcoming shortly. He pressed me to come to Washington, D.C. to meet with his people from San Antonio, and would introduce me to the people, and expected they might alleviate some of the problems. I told him I wasn't going to do that. He told me, if possible, he would go to San Antonio himself to try to work something out with them."

I then asked Agent Salvemini, you may recall, ladies and gentlemen, whether in fact he did go to the Washington area as he had been requested. And this Agent Salvemini's response:

"No, I did not. Other arrangements were made."

The next testimony we have from Agent Salvemini pursuant to this statement that other arrangements were made is his testimony of a meeting with Frank Seaman, the meeting which began at the Market Diner in Manhattan and continued as they drove downtown to a place called His Honor's Restaurant.

And again, I think it is important and helpful to consult the record on this particular meeting and see exactly what the testimony was on this particular meeting.

We are now at the point where Agent Salvemini

is testifying as to what took place when he was at the Market Diner.

"Well, before we got in the car, while standing outside of the Market Diner, Mr. Seaman told me he expected I was going to show him a quantity of money. He said, since you already seen I can handle my end of the bargain, already received a sample of what I can do, he indicated, when was I going to show him a quantity of money."

Agent Salvemini further testified that he and Mr. Seaman then got into an undercover vehicle and started driving downtown to His Honor's Restaurant.

"We got into the undercover vehicle and started driving downtown, and as we drive downtown, we continued our conversation. And at that time Mr. Seaman stated to me he had brought with him from San Antonio to the Washington, D.C. area a pound of heroin, which he had cut and made two pounds of heroin. He had diluted it, and there were two pounds of heroin. Of the two pounds, one pound had been sold, and one pound was presently in the possession of Teddy."

Agent Salvemini then testified further:

"I stated I was unhappy with the sample, I was more interested in getting a quality package of narcotics than one right immediately."

At that time the testimony goes on:

"I remember we were under the West Side Highway and at Vesey Street, when he told me the package I would be receiving would be twice as good as the one he had sent me through Teddy. Twice as good as the one I sent you through Teddy, were his words."

Agent Salvemini proceeded to the meeting which took place at the Market Diner and the final discussions which took place between Mr. Salvemini and Mr. Seaman as they were driving back up to the Market Diner from His Honor's Restaurant and in the course of that drive Agent Salvemini testified that a tentative price and amount was agreed upon for a heroin purchase. I recall from the testimony that Agent Salvemini asked the defendant -- asked Mr. Seaman, excuse me, if Teddy would make the delivery, and Mr. Seaman's reply was no, he would be handling this one.

(continued on next page)

Finally, ladies and gentlemen, the testimony of Agent Salvemini proceeds on through a series of phone conversations which he made on December 11th, and December 12th, to Mr. Seaman in Texas. And in the course of the phone conversations final arrangements were worked out for the ultimate delivery of a quantity of heroin at LaGuardia Airport on December 12th.

Ladies and gentlemen, the final portion of Agent Salvemini's testimony as you recall dealt with the event which took place at the LaGuardia Airport when he received from Mr. Seaman a quantity of heroin and at that time Mr. Seaman and the individual who was with him, Mr. Homen, were arrested.

Now, this morning, Agent Salvemini testified as to various items which were seized from the defendant -- excuse me, from Mr. Seaman. Among these items I refer you to what was introduced into evidence as Government's Exhibit 13. It is a small address book which you have had an opportunity to examine. Among the entries in that address book is one under the name of Teddy Nineman, area code 703-569-9362.

Agent Salvemini testified that this was the

same number at which he had called the defendant Mr. Hinman in Virginia.

You also heard testimony from Mr. Manning, as I referred to earlier, the Forensic Chemist, and he testified as to the sample and also as to the quantity of heroin or the quantity of powder which was received at the airport and Mr. Manning testified that the result of his analysis was that he found that quantity of powder did contain heroin.

Finally, we had testimony from two other Special agents of the Drug Enforcement Administration Mr. Frank DeCarlo and Mr. Richard Techler. This, plus other testimony which was received, and the exhibits which were introduced into evidence, comprises the Government's case in this particular trial -- the case of United States against Edward Taylor Hinman.

Now, I want to examine with you more closely this evidence in view of the basic question which you as jurors will be asking yourselves and deciding in this case. Did the defendant Edward Taylor Hinman knowingly and intentionally conspire to possess and distribute a quantity of heroin.

I refer you first to the statements which

Mr. Hinman made himself as described by Agent Salvemini at the Market Diner on October 30th, 1972. He referred, as I have just read, to his Texas people, and to quantities of heroin and to stashes and farms. I ask you ladies and gentlemen, are these the questions -- are these the type of statements that you would hear from a man who is not involved with individuals or people in the heroin business?

You also heard testimony from Agent Salvemini of his receipt of a sample which was later testified to by Mr. Manning to contain heroin.

Again, is this the type of action which a person would take, would they deliver to another person a quantity of heroin if they were not in fact in the business? I ask you this question. Is it a question you must answer?

And finally, I refer to the words which Agent Salvemini testified the defendant used himself. The word "sample."

What do we think of when we use the word sample? You may think of the situation when you order a rug in a store, you get a small swatch. The sample is a small piece of the carpet which you intend

to buy. You take that sample as indicative of what is to follow. When you use the word sample you might think to yourself this is what I may or may not get if I buy it.

Again, ask yourselves in considering this testimony, when the defendant gave a quantity of heroin to Agent Salvemini at the Market Diner and stated this was a sample, does this show that he in fact was contemplating further action and further developments? Did he mean it would just end with that one delivery?

We next pass on to phone conversations which took place. Again, in the course of these conversations there are references by the defendant to the fact that he may shortly be having to make a heroin delivery on short notice. There are also references again in later conversations to the Texas people, to problems that he was having with the Texas people, and in fact he stated that he might have to go down to Texas himself to straighten it out. And he asked Agent Salvemini if Agent Salvemini would come down to the Washington area and possibly meet with his Texas people to straighten out the problems of delivery.

Again, ladies and gentlemen, I think it is important to when you are considering the testimony to bear in mind and ask yourselves these questions, are these the type of statements that a person would make if he was not involved in a conspiracy or if he was not involved in an arrangement or some kind of a plan to deliver narcotics?

You will recall that Agent Salvemini testified that he in fact did not go down to the Washington area but he stated other arrangements were made.

The next thing we hear is the arrival of Mr. Seaman and his meeting with Agent Salvemini. Can we infer, ladies and gentlemen, that this arrival of Mr. Seaman was a part of those arrangements?

Again, I draw your attention to the fact that Agent Salvemini testified to the statements which Mr. Seaman made and he also, Mr. Seaman stated, similar to what Mr. Hinman had stated as related by Agent Salvemini, that large quantities of narcotics were being kept in rented farms as stash places.

A thing most importantly in the testimony of Agent Salvemini as it relates to his discussions with Mr. Seaman is the sample. In his summation

remarks, Mr. Rosenthal stated that at the time when Agent Salvemini met with Mr. Seaman, Agent Salvemini testified that Mr. Hinman was not present. And that Mr. Hinman was not discussed at length. I would draw your attention, ladies and gentlemen, to the fact that there was at the meeting which Agent Salvemini had with Mr. Seaman discussion of the sample. There was a reference to the sample.

Agent Salvemini said he was not particularly satisfied with the sample. He wanted something better. Mr. Seaman confirmed the fact that the sample had come from him through the individual he identified as Teddy.

As I read his testimony, and recollect it in my mind, the sample was the frame of reference for the discussion between Agent Salvemini and Mr. SEaman as to the eventual heroin transaction. It was the sample which was referred to when Mr. Seaman said to the effect what I get from -- what you get from me will be twice as good as what you received before.

Ladies and gentlemen, I submit that it was this sample which at these important discussions with Mr. Seaman, this sample, which had come from Mr. Hinman and which Mr. Seaman stated to Agent

Salvemini came from Mr. Hinman, it was this sample which produced the common ground and the framework within which the discussions for the ultimate transaction took place.

And finally, there is the discussion when Agent Salvemini asked Mr. Seaman "Is Teddy going to handle this order?" Mr. Seaman's reply was "no, I will be taking care of this delivery."

And finally, we have what transpired at LaGuardia Airport. The final delivery of a quantity of heroin, and several other items. And again I ask you ladies and gentlemen, examine this testimony in light with the questions you must ask yourselves, bearing in mind that found on the possession of Mr. Seaman when he was arrested was this brown address book which bears the phone number in it, the same phone number as Agent Salvemini testified that he dialed when he sought to contact and did in fact contact the defendant Mr. Hinman in Virginia.

And again, ask yourselves, where was the defendant Mr. Seaman coming from? He was coming from the Austin-San Antonio area on Flight 2100 from San Antonio.

These are the questions you must ask your-

selves, ladies and gentlemen, when you are examining the testimony in this case.

Now, before closing, I would like to add simply one additional point. Mr. Rosenthal asked you as jurors to put yourselves in the seat of the defendant and ask would you want to be judged.

Ladies and gentlemen, I ask you, you must do more than put yourselves in the seat of the defendant, you must put yourselves in the seat you find yourselves in as jurors and judge the testimony fairly and impartially both to the defendant and to the Government. And I submit, ladies and gentlemen, when you consider this testimony, reflect on it carefully and examine all the evidence, you will conclude that the defendant Edward Taylor Hinman is guilty as charged in the indictment.

Thank you.

THE COURT: The jury is excused until 1:30. At 1:30 I will charge the jury.

In the meantime, lunch will be delivered to you. It will be delivered to you before 12:30 I believe.

But I made so many miscalculations, I don't want you to count on that. At 1:30 I will call you in and instruct you on the law.

The jury is excused.

Stay here or around the jury room because I expect it to be delivered soon.

(The jury left the courtroom.)

THE COURT: I might say, Mr. Rosenthal, I thought it was highly improper for you to say "Judge the defendant as if you were sitting there." There is another phrase that lawyers usually use, Judge the defendant as if he was your mother or uncle or brother. The very reason they are picked is because they are not wound up in the case and not interested in the case. And I was considering whether I should incorporate in my charge what Mr. Schall said but he relieved me of that when he said don't consider yourselves in the defendant's seat but consider yourselves as sitting in the jury seat which is almost the language I was going to use.

MR. ROSENTHAL: Mr. Schall did say what he had to say.

THE COURT: Do you think it is fair for you to judge yourself?

MR. ROSENTHAL: If I were a juror I would like

to be accorded the same treatment as if I was sitting --

THE COURT: You were just the defendant as if you were sitting in the chair? You would want the defendant to be the judge of the defendant?

MR. ROSENTHAL: No.

THE COURT: You want me to say to the defendant, based on the evidence did the Government prove its case beyond a reasonable doubt? Is that what you are saying?

MR. ROSENTHAL: No.

THE COURT: It is highly improper.

MR. ROSENTHAL: I've done it before other Federal Judges.

THE COURT: The reason I didn't stop you was because in this case I don't think it means a thing.

(A recess was taken at this time until 1:30 this afternoon.)

THE COURT: You know I am on a tight schedule.

MR. ROSENTHAL: I am sorry, your Honor.

THE COURT: Seat the jury.

MR. SCHALL: Your Honor, might I request you read the applicable portion of the Indictment?

THE COURT: I will read the whole Indictment. Of course I do.

MR. SCHALL: Thank you.

THE COURT: Seat the jury.

They ought to know the charge.

(The jury is in the jury box.)

THE COURT: Madam Foreman and Ladies and Gentlemen, it now becomes my duty to instruct you on the applicable law. Of course, I said once before, in order to have a fair trial, we must have a fair jury. That in turn means you must have a jury that is ready and willing to decide the case on the evidence, free of all bias and prejudice, and sympathy, and in accordance with the law as I instruct you.

You must accept the law as I instruct it. That is your duty as jurors. I must accept your fact-finding, because you are the sole judges of the facts. And, of course, your verdict is the ultimate decision in the case, the finding of guilt or not guilty on the charge

Charge of the Court
against this defendant.

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The charge on which the defendant has entered Not Guilty is based on a Section of the Drug Abuse and Control Act of 1970. It was enacted by the Congress. Your personal views as to the need or wisdom of the statute is irrelevant. And more than that, a violation of your duty and understanding as jurors to even consider a good or bad law. You must take the law as I must take the law. I am instructing you on the law as I have found it, and as I understand it, and you must accept that.

Every defendant in every criminal case is presumed to be innocent. That means that the defendant is cloaked with a presumption of innocent at the outset of a trial and throughout the trial and throughout your deliberations. It means that you must conclude that the defendant is innocent of the crime charged. And that presumption prevails unless the quality of the Government's proof is such that it convinces you beyond a reasonable doubt that the defendant is guilty of the crime charged.

Now, if the Government has failed to prove that the defendant is guilty of the crime charged by proof beyond a reasonable doubt, then you must find the defendant not guilty.

Charge of the Court

What is proof beyond a reasonable doubt? It is proof based on reason and common sense, and the state of the record as distinguished from some vague, imaginary or speculative duty. As distinguished from some emotional duty that may arise from some disinclination to perform the unpleasant task of finding a defendant guilty.

A reasonable doubt is the kind of doubt a reasonable man would have in a matter of great importance to him. So proof beyond a reasonable doubt is proof of such a convincing character that you would be willing to rely and act upon unhesitatingly in the most important of your affairs.

The Government is not required to prove its case beyond all doubt. The burden is to prove its case beyond a reasonable doubt. The Government doesn't have to prove to you that every bit of evidence it offered in this trial is true beyond a reasonable doubt. The Government must prove all the essential elements in the crime charged beyond a reasonable doubt. And I will charge you on what those elements are.

Now, the defendant need not offer any proof. In this case, of course, he has not. He may rely

on the failure of the Government to prove its case.

In the law, there are two types of proof. That is, direct evidence and indirect, or circumstantial evidence.

Now, direct evidence is the testimony of witnesses of what the witnesses saw and heard.

Circumstantial evidence is a procedure through which the jury makes reasonable inferences based on established facts from which to draw an inference.

In other words, if you were sitting here as a juror in a personal injury action, and Mrs. Smith was suing Mr. Jones, claiming that Mr. Jones passed a stop sign and struck and injured her, the question in all probability would be whether the defendant passed the stop sign without stopping. Mrs. Smith claiming he did, and Mr. Jones claiming he did not.

Now, that would be the disputed fact -- Did Mr. Jones pass the stop sign without stopping?

Now, if Mr. Adler and myself were on the street corner on the particular day that the accident happened, and we were standing on the corner, Mr. Adler facing me, and facing the stop sign and roadbed, if he would be called to testify, he would give direct evidence to what happened at that time and place. He might very well say

"I saw Mr. Jones' car about 150 or 200 feet from the intersection where the sign was. I saw him traveling at a rate of 65 miles an hour, and he continued past the stop sign without stopping at the same rate of speed, and struck Mrs. Smith.

And now, that is direct evidence of that fact. The witness is testifying that he saw Mr. Jones pass the stop sign without stopping.

While, if you assume I had my back to the stop sign, and to the roadway, then it is obvious I couldn't testify directly as to that fact, but that doesn't mean I am incompetent to testify. I might say that I was speaking with my Courtroom Deputy, and as I turned to my left through my peripheral vision I saw Mr. Jones' Cadillac traveling about 65 miles an hour, and then I lost sight of it for a distance of about 150 feet, and two or three seconds later, I turned to my left and there was Mr. Jones traveling at the same rate of speed, and I saw the car strike and knock down Mrs. Smith.

Now, from that version of what happened, I think you will agree that the reasonable inference from the facts established is that Mr. Jones passed the stop sign without stopping.

Now, what were the established facts? If you believe my testimony, it was that Mr. Jones was traveling at 65 miles an hour, that he traversed 150 feet in two or three seconds, and from that I think it is reasonable to infer he could not have stopped and started up again.

So that is the difference between direct and circumstantial evidence. The law does not hold that one form of evidence is a better quality, it says only on the entire case, both the direct and circumstantial evidence, the Government must prove its case beyond a reasonable doubt.

What is the difference between an inference and a presumption? Well, in an inference, the jury may make, they may draw a conclusion, may come to a conclusion based on reason and common sense and experience.

In a presumption, the jury must conclude the facts. And that conclusion prevails, that presumption prevails unless overcome by proof to the contrary beyond a reasonable doubt. And the example, of course, is the presumption of innocence. The presumption of innocence prevails unless the Government proves the guilt of the defendant by proof beyond a reasonable doubt.

What is evidence in this case? It is the Sworn

testimony of the witnesses that you heard and the Exhibits that were marked in evidence.

What is not evidence? Well, what the lawyers said in the Openings and Summations is not evidence. It serves a useful purpose, but it is not evidence. Matters stricken from the record are not evidence. If I said Strike it from the record, physically it means figuratively disregard it. Strike it from your mind and memory, because you may consider only what is in the record. If it's in the record, and all the reasonable inference is to be drawn from the matters established from the record.

You may not speculate on what the answer might have been to a question to which objection was sustained. We had very few objections, but if a lawyer asked a question, I sustained objection to it, you can't speculate on what the answer might have been. Because, again, it is not in the record, so you may not consider it. Consider only what is in the record.

Now, you, the jurors, are the sole judges of the credibility of the witnesses. The means the believability. Scrutinize their testimony given under the circumstances which witness testified, and every matter in evidence which tended to show whether a

a witness is worthy of belief, taking into consideration the witness' intelligence, the witness' motive, and state of mind, the demeanor and manner while on the witness stand, the witness' own ability to observe the matter to which he has testified, whether he shall have impressed you as having an accurate recollection, the relationship each witness may bear to either side of the case; the extent to which a witness is corroborated or contradicted by his own testimony or other testimony in the record.

The law does not compel a defendant in a criminal case to take the witness stand and testify. No presumption of guilt may be raised, and no unfavorable inference of any kind may be drawn in the failure of the defendant to testify. A defendant as previously charged, may rely on the failure of the Government to prove its case. It would be improper for you to discuss the failure of the defendant to testify during your deliberations.

Now, I am about to read the Indictment in this case. Before I do, I want you to know that the Indictment is not proof of the charge in the Indictment. The defendant has pleaded Not Guilty to the charge. The Indictment is the method by which the law brings the

defendant to court for trial, and nothing else.

The Indictment reads: "On or about and between the 30th day of October, 1972, and the 1st day of December, 1972, both dates being approximate and inclusive, within the Eastern District of New York, and elsewhere, the defendant Edward Hinman, also known as "Teddy," and Frank J. Seaman and Daniel John Homen, who were severed from this case, did knowingly and intentionally conspire to commit an offense against the United States in violation of Title 21, United States Code, Section 841(a) by conspiring to possess and distribute a quantity of heroin, a Schedule I Narcotic Controlled Substance in violation of 21 United States Code, Section 846."

You notice two references there to the United States Code. Almost all of our Federal Law is codified. These particular sections are in Title 21, entitled Food and Drugs.

In 1970, the Congress enacted what is known as the Drug Abuse and Control Act of 1970.

(continued on next page.)

In that statute Congress made certain determinations. It said Section 812(a) in part, there are established five schedules of controlled substances to be known as Schedule I, II, III, IV and V. Under Schedule I, in defining what drugs come under Schedule I, the Congress says:

"The finding required for each of these schedules are as follows: Schedule I, the drug or other substance has a high potential for abuse; (b) the drug or other substance has no currently accepted medical use for treatment in the United States; (c) there is a lack of accepted safety for use of the drug or other substance under medical supervision."

Now, under Schedule I there is listed under (b), Subdivision 10, heroin.

So when the indictment, the count, talks about a Schedule I drug it is referring to the schedule established by the Congress.

Now, Section 841 makes it a crime for anyone to possess heroin for distribution. And I say for distribution as distinguished from possessing it for one's own personal use. It says it in this language, and I am just reading part of it:

"It shall be unlawful for any person knowingly

or intentionally to possess with intent to distribute a Schedule I drug."

Now, this defendant is not charged with possessing or distributing. I think that Mr. Rosenthal's reference when he said that the proof that this defendant gave special agent Salvemini a sample on October 30th does not prove a crime. I think what he was saying really is that this defendant was not charged with a crime.

This defendant is charged under the conspiracy section which refers back to this section in effect in this language:

"Any person who conspires to commit any offense defined in this subchapter, conspiracy, to commit any offense described in this subchapter, is guilty of a violation of 846."

So, Mr. Rosenthal was correct when he said he is not charged with what we call the substantive charge of possessing. He is charged with conspiring to possess with intent to distribute heroin. And there is a difference. But as I will explain later, any evidence that shows this defendant was a member of the conspiracy can be considered by you to determine whether he was a member of the conspiracy

if his testimony by his actions and what he said, that of course would include testimony, if you believe the testimony, that he delivered a sample to Special Agent Salvemini.

Now, what is a conspiracy? A conspiracy is a combination of two or more persons who by concerted action seek to accomplish an unlawful purpose. A conspiracy has been defined as a kind of a partnership in criminal purposes in which each member becomes the agent of every other member of the conspiracy. The gist of the offense is the agreement, the combination to commit the crime -- not committing the crime itself. The mere similarity of conduct among various persons and the fact they may have associated with each other, may have assembled together, discussed the common aims and interest, does not necessarily establish proof of the existence of the conspiracy.

However, the evidence in the case need not show that the members entered into any expressed or formal agreement, or that they directly by words spoken or in writing stated between themselves what their object or purpose was or the details thereof, or the means by which the object was to be accomplished.

What the evidence in this case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the participants in the conspiracy in some way or in some manner, or through some contrivance positively or tacitly came to a mutual understanding as to what their objectives were or what they were trying to accomplish, and that it was unlawful.

When they become a member of the conspiracy without full knowledge of all of the details of the conspiracy -- in other words, a person who has no knowledge of the conspiracy but happens to act in a way that furthers the objectives of the conspiracy does not thereby become a conspirator.

I charged you during the trial that certain statements and acts performed by Mr. Seaman may be attributable to the defendant Edward Taylor Hinman if certain conditions were fulfilled. That is a question of evidence -- whether one actually was the agent for the other. I told you all the proof that was required before you could charge this defendant with what someone else said or did, someone else being Mr. Seaman.

Now, in order to prove the conspiracy, the

Government must prove beyond a reasonable doubt that the conspiracy described in the indictment was willfully formed and existed at or about the time alleged. And the time alleged was between October 30th and December 12, 1972.

Second, that the accused willfully became a member of the conspiracy. If you will recall, at some point during your selection, I said that in every felony the Government has to prove criminal intent and proscribed or prohibited conduct.

Now, what the Government has to prove here is that the defendant knowingly and willfully entered into the conspiracy. That is the criminal intent, knowingly and intentionally. That he was aware of what he was doing and that he knew that the conspiracy was to deal in narcotics.

The Government need not prove that he knew the specific statute that was being violated, just that he knew that it was unlawful to deal in narcotics. And knew that this understanding, this deal was organized for the purpose of dealing in narcotics. But that proof must come not from what the witness said, Mr. Seaman told him about the defendant, that is evidence that you set aside. In

order to determine whether the Government proved beyond a reasonable doubt that this defendant entered into the conspiracy and it was knowingly and willful, it must be from testimony of Special Agent Salvemini in this case, and possibly Special Agent DeCarlo, of what this defendant said or did. And so in that regard, in order to determine the existence of a conspiracy, you may, for example, if you believe the testimony, take into consideration that this defendant handed a sample to Special Agent Salvemini, and the conversations, if you believe that testimony, that Special Agent Salvemini said he had with the defendant, that in your opinion dealt with a narcotics deal.

What you may not take into consideration to determine whether this defendant entered into a conspiracy is what Mr. Seaman may have said to Special Agent Salvemini about this defendant's participation.

You see, that's the element of criminal intent, it is what this defendant did to join the conspiracy and direct testimony of that. Testimony of the witness of what this defendant said and did.

Now, once you determine that this defendant

entered the conspiracy then the other principle holds true, that whatever Mr. Seaman said, if you find Mr. Seaman also was a member of the conspiracy, also binds this defendant -- if you find it was during the term of the conspiracy and in furtherance of the purpose of the conspiracy. So that is the second element. I will go over it again.

The first, that the conspiracy described in the indictment was willfully formed and was existing at or about the time alleged in the indictment; second, that the accused willfully and knowingly became a member of the indictment; third, that one of the conspirators thereafter knowingly committed at least one of the overt acts, at least one overt act. And that means that one of the conspirators, that would be either -- if you find that the defendant Hinman was a member, that Mr. Seaman was a member -- anything that he did knowingly that he was aware was in furtherance of the business of the conspiracy; telephone conversation that negotiated the deal; a meeting for the purpose of transacting the delivery of a sample, you decide whether that was knowingly done in furtherance of the conspiracy; the delivery of some seven or eight ounces of the

substance on December 12th. Whoever did it was aware of what he was doing and if he was a member of the conspiracy, then if the Government proves that beyond a reasonable doubt, that satisfies the third element. And the fourth element, that such overt act was knowingly done in furtherance of the object of the conspiracy to promote the object -- to accomplish the purpose of the conspiracy.

Now, if the Government proves all that beyond a reasonable doubt, then you must find the defendant guilty of the charge in the conspiracy. On the other hand, if the Government fails in proving any element of the crime charged you must find this defendant not guilty.

Now, you will shortly be excused from the court to deliberate on the matter before you. The trial was a relatively short trial, I am sure that the evidence is vividly in your mind. Deal with the evidence and the evidence only, free of all bias and prejudice or sympathy.

The verdict must be unanimous. It must be the considered opinion and the considered determination of twelve jurors. In other words, a unanimous verdict is a verdict of twelve jurors agreeing to the same

verdict.

You have the obligation of going over the testimony with each other with a view to arriving at a unanimous verdict. It is improper for any juror to refuse to talk about the case or insist on his position. It is also improper for a juror to abandon his duty and say in effect I agree with whatever you do. Each one must decide the case for himself and herself.

During your deliberations you may have occasion to ask for some testimony or ask for the exhibits. If you want testimony try to identify it by subject matter or by the name of the witness, if you can. It makes it easier to find.

If you want the exhibits, just write, "I want the exhibits." We do have some documents so you can call for the exhibits.

At this point, I will ask you to leave the courtroom for the moment. Don't start your deliberations, I want to speak with the lawyers. One more thing, I meant to charge this as an example of circumstantial evidence. Now Mr. Rosenthal contests the identity of the person at the other phone when Mr. Salvemini said he called. Now, if you

Charge of the Court

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believe the testimony he just said that he called and
somebody said in effect, yes, this is Teddy.

(continued next page)

THE COURT: Now, of course that in and of itself is not enough to charge this defendant with that testimony, because it's only chargeable against him if the voice on the other end is identified as this defendant's voice. But you can go beyond the particular conversation to determine. You may take into consideration the subject matter of that conversation. Take into consideration the call back, if you believe Mr. Salemini's testimony by an individual.

Take into consideration the fact that Mr. Salvemini, again if you believe him, said he gave this defendant this telephone number. You may take into consideration as a circumstance, if you believe it, that Mr. Salvemini said this defendant gave him the telephone number.

And taking all the circumstances into consideration, you determine whether Mr. Salvemini was in fact talking to this defendant.

Now, of course if the fact is not established, if the Government hasn't shown by the circumstance that it was this defendant,

then just disregard the whole conversation.

But that's an example of circumstantial evidence as distinguished from direct evidence.

The Jury may now be excused while I talk the matter over with the lawyers.

(Jury left the Courtroom.)

THE COURT: First, Mr. Schall, do you have any objections or exceptions?

MR. SCHALL: Your Honor, I would request that your Honor, when the Jury returns, just prior to their final deliberations if you could perhaps directly give Government's request number 7, the question of circumstantial evidence with respect to a conspiracy. You did speak about circumstantial evidence.

THE COURT: I think I covered that enough. I decline to do that.

MR. ROSENTHAL: Your Honor, I would request that you charge the Jury that they have to find a conspiracy between Mr. Hinman, Seaman and Holman, or any of those names, and not a conspiracy between him and Salvemini before they could consider the testimony of Seaman.

THE COURT: Well --

MR. ROSENTHAL: Well -- In other words, they might have gotten the idea that there was a deal going between Salvemini and Hinman and that was a conspiracy.

THE COURT: All right.

MR. ROSENTHAL: And there is one more point, your Honor. You made reference to the phone calls, and it's my recollection that Agent Salvemini was given the phone number not by Hinman but by the informant and that Salvemini made the calls to someone who then later at the other end of the phone gave him a call-back number.

In other words, he never supplied --

MR. SCHALL: No, I --

THE COURT: Is that true?

MR. SCHALL: I believe, your Honor, the way the testimony went it's correct that Agent Salvemini received the phone number through the informant. He then called this number. He called a first time and a female voice, I think the agent testified, came on.

THE COURT: All right But at any rate that was wrong when I said that he gave the

number to Special Agent Salvemini.

MR. ROSENTHAL: Thank you.

THE COURT: The point -- I will correct that.

The point I wanted to make is what I believe to be the misinterpretation of identification of voices that I remember learning in law school. You can't identify a voice on a first call, there have to have been two or three calls. Well, there are many cases that say that's just pure nonsense, any circumstance.

If this defendant said, "Well, I think I can deliver that, it will be of heroin, and Salvemini called and said, "I have the pound of heroin," well, how many people in this country of 200 million would understand what they were talking about if this wasn't the defendant.

All right, I will make that correction.

MR. ROSENTHAL: Thank you.

MR. SCHALL: Your Honor, may I make one objection --

THE COURT: Will you show this to the

5 lawyers and particularly the United States

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Attorney so he can get it ready?

MR. SCHALL: Your Honor, may I make one objection to one area that Mr. Rosenthal requested, where he seemed to imply that the testimony indicates that Mr. Hinman was conspiring with Agent Salvemini. I don't believe that this is the case.

THE COURT: I am going to charge in this language: The Government must prove beyond a reasonable doubt that this defendant conspired with either Seman, Holman or both.

MR. SCHALL: I accept that charge. Thank you.

THE COURT: All right, seat the Jury.

(The Jury entered the Courtroom.)

THE COURT: I apparently made an error when I said that in making the determination on a disputed issue as to whether this defendant was on the other end of the telephone wire that you can take into consideration the fact that this defendant gave his telephone number or a telephone number to Special Agent Salvemini. Well, both lawyers say that that is wrong, that the testimony is that Special

Agent Salvemini got the telephone number from the informer. You are shaking your heads, so you recognize that I made the mistake. But that proves one thing to you, that my memory isn't too good. So if I say something don't take my word for it please. Use your own recollection.

Now, I charge you that the conspiracy must consist of two or more people, so the Government must prove in this case that this defendant conspired with either Frank J. Seaman or Daniel John Holman or both. The Government must prove that beyond a reasonable doubt.

Now, at this point I am going to have to excuse alternates number one and two. You are excused with the thanks of the Court. Would you please retire, take your cards and take them downstairs, and take any personal effects you have from the Jury room. Would you do that please?

* Will the Clerk please swear in the Marshals?

(Marshals sworn.)

7 THE COURT: The Jury is excused

to deliberate on the matter before them.

I am sure the Jury will render a verdict in accordance with their oath, and that is to render a verdict in accordance with their oath, and that is to render a true and just verdict, which again means based on the evidence, free of all bias and prejudice or sympathy and in accordance with the instructions of the Court.

(The Jury is excused.)

(The Jury left the Courtroom.)

(A recess is taken.)

THE COURT: The Jury in Court Exhibit 3 says "We'd like to see Seaman's address book again" and I understand that the lawyers agreed to turn it over to the Marshal.

MR. ROSENTHAL: That's correct.

THE COURT: And it was turned over to the foreman of the Jury.

MR. SCHALL: That's correct.

THE COURT: All right.

(Continued on the next page.)

THE CLERK: Two jury notes marked 165

Court's Exhibits 3 and 4 for identification.

THE COURT: Seat the jury.

(The jury is in the jury box.)

THE COURT: Madam Foreman, I have your note saying the jury arrived at a verdict. Will you please stand?

In the case of United States against Edward Taylor Hinman, how do you find the defendant, guilty or not guilty?

THE FOREMAN: We, the jury, find the defendant guilty.

THE COURT: Juror No. 2, you heard the verdict as given by the Foreman, is that your verdict?

JUROR NO. 2: Yes.

THE COURT: Juror No. 3, is that your verdict?

JUROR NO. 3: Yes.

THE COURT: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE COURT: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE COURT: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE COURT: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE COURT: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE COURT: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11, is that your verdict?

JUROR NO. 11: Yes.

THE COURT: Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE COURT: So say you all.

Any motions to be made before I discharge the jury?

MR. ROSENTHAL: No, your Honor.

MR. SCHALL: No, your Honor.

THE COURT: The jury is discharged with the thanks of the Court. I don't want to say too much to you about the case. If it were your last day I would make some kind of speech but you just started on your service and you may have another case and you may even be before me because I will be picking another jury on Monday. So I don't want to prejudice any other defendant in any case by making any comment. All I can say is I apologize for having jumped up and down. As you may have discovered, I have another jury

in another case that has been deliberating since yesterday morning. It is a seven-count indictment that is complicated. I gave it to the jury twenty minutes after eleven and I think it is the longest deliberation in any case that I ever had in my thirteen and a half years on the bench. I could have anticipated that and not have you come in at 1:00 o'clock. But you did a good job. Report downstairs. The jury is discharged. Report downstairs to the central jury room.

(The jury left the courtroom.)

THE COURT: Any motions?

MR. ROSENTHAL: May I reserve my motions for the date of sentence?

THE COURT: Yes. Any questions about bail here?

MR. SCHALL: Your Honor, I believe now -- I would be prepared to continue the bail status pending any appeal or sentencing. In view of the fact that the defendant has appeared when required to and has reported when required. The only request I would have of the Court would be his location being made a bit more certain than it is now and perhaps some restrictions on his movement be imposed at this time. Otherwise --

THE COURT: Where is the defendant now?

MR. ROSENTHAL: He lives with his family in Florida, in Newport.

THE COURT: He is living there --

MR. ROSENTHAL: Yes, he has a trailer on his land. He is waiting for the Post Office people to put up a box. He has a Post Office box address where I contact him.

THE COURT: You have a telephone?

MR. ROSENTHAL: As of now, no, but I can call a secretarial service that will get in touch with him.

THE COURT: You say he lives with his folks in the trailer?

MR. ROSENTHAL: Yes.

THE COURT: What does his father do?

MR. ROSENTHAL: He doesn't live with his mother and father, with his family.

THE COURT: He is married?

MR. ROSENTHAL: He is living with a woman for a number of years.

THE COURT: What is her name?

THE DEFENDANT HINMAN: Ann Johnson. She has two boys, twelve -- one of them just had a birthday, twelve and eleven.

THE COURT: Does she work?

THE DEFENDANT HINMAN: Yes, for me.

THE COURT: With you?

THE DEFENDANT HINMAN: Yes, on the construction sites doing rock loading and dry well work.

THE COURT: Where did you work last?

THE DEFENDANT HINMAN: I worked for Paul McMann Dry Wood, in Hoeldtke .

THE COURT: Spell that?

THE DEFENDANT HINMAN: H-o-e-l-d-t-k-e.
It is a name you don't pronounce the way it is spelled.

THE COURT: Where is that?

THE DEFENDANT HINMAN: Beacon Construction Corporation. I am working in the Beacon Wood Division, Route 35, Florida. Newport. It is 33552.

THE COURT: How much more construction do you have there?

THE DEFENDANT HINMAN: I would estimate about 400 units.

THE COURT: You are there for the next year if you continue working as a subcontractor or a laborer?

THE DEFENDANT HINMAN: I subcontract labor --

THE COURT: Are you a member of the union?

THE DEFENDANT HINMAN: No, they don't have a union down there. I wish they did.

THE COURT: Do you belong to any clubs or organizations?

THE DEFENDANT HINMAN: No.

THE COURT: How long have you been in the trailer?

THE DEFENDANT HINMAN: We just purchased it a little over a month ago from Edison Homes from Newport Richie.

THE COURT: Do you intend to leave the State of Florida?

THE DEFENDANT HINMAN: No. I bought an acre and a half from Sun Coast --

THE COURT: What county?

THE DEFENDANT HINMAN: Pasker.

THE COURT: Is that Southern Florida?

THE DEFENDANT HINMAN: No, middle. Tampa, St. Petersburg, north of that.

THE COURT: Bail limits the State of Florida. You are not to leave the State of Florida except to travel here back and forth. If you want to leave the State of Florida get in touch with Mr. Rosenthal and tell him the purpose.

MR. ROSENTHAL: When he comes here he stays
at his --

THE COURT: Yes, I was going to ask that.
Where do you stay?

THE DEFENDANT HINMAN: 2 Sutton Place South.

MR. ROSENTHAL: With his grandmother.

THE COURT: What is the bail?

MR. SCHALL: He is on his own recognizance.

THE COURT: You have no objection?

MR. SCHALL: No objection.

THE COURT: The defendant may continue on
his own recognizance. We don't have anybody from
Probation here.

MR. ROSENTHAL: I will take him down.

THE COURT: That is the order of the Court.
Go directly to Probation.

MR. SCHALL: Thank you, your Honor.

THE COURT: You are welcome.

(Proceedings concluded.)

* * *

JUDGMENT AND COMMITMENT

184

JUDGMENT AND COMMITMENT (Rev. 2-68)

Cr. Form 10-75c

United States District Court
FOR THE

~~EASTERN DISTRICT OF NEW YORK~~

United States of America

v.

EDWARD TAYLOR HILTON

No.

72 CR 1319

On this 7th day of JUNE, 1974 came the attorney for the
government and the defendant appeared in person and
with counsel

It IS ADJUDGED that the defendant upon his plea of²
~~NOT GUILTY~~ a verdict of guilty

has been convicted of the offense of violating T-21, U.S.C. Sec. 846, in that on
or about and between Oct. 30 and Dec. 12, 1972, both dates being
approximate and inclusive, the defendant, with others, did knowingly
and intentionally conspire to commit an offense against the U.S. in
violation of T-21, U.S.C. Sec. 841(a) by conspiring to possess and
distribute a quantity of heroin, a Schedule I narcotic drug controlled
substance

as charged³ in count 1

and the court having asked the defendant whether he has anything to say why judgment should not
be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or
his authorized representative for imprisonment for a period of⁴

one year and one day
and special parole term of 5 years on count 1. Bail conditions
continued from *Grand Jury*

It IS ADJUDGED that⁵
~~that the defendant is~~

JUDGMENT AND COMMITMENT

184

JUDGMENT AND COMMITMENT (Rev. 2-68)

Cr. Form No. 25c

United States District Court
FOR THE

EASTERN DISTRICT OF NEW YORK

United States of America

v.

EDWARD TAYLOR HEITMAN

No.

72 CR 1319

On this 7th day of JUNE, 1974, came the attorney for the government and the defendant appeared in person and with counsel

It Is ADJUDGED that the defendant upon his plea of ~~guilty~~ ^{as charged} a verdict of guilty

has been convicted of the offense of violating T-21, U.S.C. Sec. 846, in that on or about and between Oct. 30 and Dec. 12, 1972, both dates being approximate and inclusive, the defendant, with others, did knowingly and intentionally conspire to commit an offense against the U.S. in violation of T-21, U.S.C. Sec. 841(a) by conspiring to possess and distribute a quantity of heroin, a Schedule I narcotic drug controlled substance

as charged³ in count 1 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴

one year and one day and special parole term of 5 years on count 1. Bail conditions continued *James A. ...*

It Is ADJUDGED that⁵
~~the defendant is~~

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to⁶

B. Jacob Miller
United States District Judge.

Clerk.

A True Copy. Certified this

7th

day of

June 1974
W. D. Miller

NOTICE OF APPEAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-against-

72CR1319

NOTICE OF APPEAL

EDWARD TAYLOR HINMAN,

Defendant
-----X

S I R :

PLEASE TAKE NOTICE that the defendant, EDWARD
TAYLOR HINMAN, hereby appeals from the judgment of this Court
entered June 7, 1974 convicting him of violation of title 21 USC
Section 841 (a).

Yours, etc.

LOUIS R. ROSENTHAL
16 Court Street
Brooklyn, New York 11241
(212) 355-2600

CC: CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 Cadman Plaza East.
Brooklyn, New York

UNITED STATES ATTORNEY
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-against-

EDWARD TAYLOR HINMAN,

STIPULATION

Defendant
-----x

IT IS HEREBY STIPULATED AND AGREED by and between the attorney's for the parties herein, that the record certified to the Court of Appeals in the above captioned matter shall consist of a photocopy of the docket entries, the indictment, the notice of appearance, the stenographer's transcript of trial, the Government's requests to charge, the defendant's requests to charge, the judgment and commitment and the notice of appeal.

It is also stipulated and agreed that the other documents in the Court Clerk's file pertain to other defendants and are not necessary for the appeal.

DATED: Brooklyn, New York
June 25, 1974

DAVID G. TRAGER, ESQ.
United States Attorney, EDNY

by _____
ALVIN R. SCHALL

LOUIS R. ROSENTHAL
Attorney for Defendant HINMAN
16 Court Street
Brooklyn, New York 11241
(212) 855-2600

RECEIVED
U. S. ATTORNEY
JUL 25 11 43 AM '74
EAST. DIST. N. Y.

[Handwritten signature]

